

Supplement to All England Law Reports 12 January 2000

# THE ALL ENGLAND LAW REPORTS

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Tables and Index 1999

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Index Editor

CHRISTINE IVAMY MA

of Gray's Inn, Barrister

 Butterworths





# THE ALL ENGLAND LAW REPORTS

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## Tables and Index 1999

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# Introduction

The Tables and Index 1999 covers all the cases reported in the volumes of the All England Law Reports for 1999, including the European Cases volume and Commercial Cases volumes. The index is a continuation of the Consolidated Tables and Index 1936–1998. For information concerning the use of this index readers should refer to the introductions to volumes 1 and 2 of the 1936–1998 index.

The tables and index consists of five sections:

- a table of cases reported and judicially considered; this table lists alphabetically all cases reported in the All England Law Reports in 1999, and in addition it lists all cases of any date which have been reported in the All England Law Reports and the All England Law Reports Reprint and which were judicially considered, ie applied, distinguished, overruled and so on, in cases reported during 1999
- a table of practice directions and notes issued in 1999
- a table of statutes etc judicially considered in 1999
- a table of words and phrases judicially considered in 1999
- a subject index, including a full system of cross-references, of all cases reported in 1999

The Tables and Index 1999 together with the three volumes of the Consolidated Index 1936–1998 provide a complete index of cases reported in the All England Law Reports from 1936 to the end of 1999.

The index is separate from the 1999 volumes of the All England Law Reports and should therefore *not* be sent in for binding with the loose parts of the reports.

January 2000

# Introduction

The following index is intended to provide a guide to the contents of the All England Law Reports, which are published by the Incorporated Council of Law Reporting for England and Wales (ICLR). The index is divided into two main sections: a list of the reports published in the year 1999, and a list of the reports published in the years 1997-1998. The index is intended to be used in conjunction with the All England Law Reports, which are available in both print and electronic form.

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Not followed, Re Mark One (Oxford Street) plc [1999] 1 608

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Considered, Hamilton v Al Fayed [1999] 3 317

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Leave to appeal refused [1994] 2 xx, HL

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Leave to appeal refused [1999] 4 xix, HL

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R v Bett [1999] 1 600, CA

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Set aside [1999] 1 577, HL

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R v Bristol City Council, ex p Everett [1998] 3 603, QBD

Affirmed [1999] 2 193, CA

R v Canons Park Mental Health Review Tribunal, ex p A [1994] 1 481, QBD

Reversed [1994] 2 659, CA

Overruled, Reid v Secretary of State for Scotland [1999] 1 481

R v Central Criminal Court, ex p Abu-Wardeh [1997] 1 159, QBD

Considered, R v Crown Court at Manchester, ex p McDonald [1999] 1 805

R v Central London County Court, ex p London [1999] 3 991, CA

R v Chief Constable of Sussex, ex p International Trader's Ferry Ltd [1995] 4 364, QBD

Reversed in part [1997] 2 65, CA

Affirmed [1999] 1 129, HL

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Affirmed [1998] 3 310, CA

Considered, Woolgar v Chief Constable of the Sussex Police [1999] 3 604

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R v Cooney [1999] 3 173, C-MAC  
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     Distinguished, R v Chief Constable of Sussex, ex p International Trader's Ferry Ltd [1999] 1 129  
 R v Cox [1981-5] 68, CCR  
     Applied, Dubai Aluminium Co Ltd v Al Alawi [1999] 1 703  
     Applied, Dubai Aluminium Co Ltd v Al Alawi [1999] 1 Comm 1  
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     Not followed, R v Crown Court at Winchester, ex p B (a minor) [1999] 4 53  
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 R v Cuthbertson [1980] 2 401, HL  
     Considered, R v A-G, ex p Rockall [1999] 4 312  
 R v Dartmoor Prison Board of Visitors, ex p Smith [1986] 2 651, CA  
     Considered, R v Secretary of State for the Home Dept, ex p Salem [1999] 2 42  
 R v Dept of Health, ex p Source Informatics Ltd [1999] 4 185, QBD  
 R v Derby Magistrates' Court, ex p B [1995] 4 526, HL  
     Considered, General Mediterranean Holdings SA v Patel [1999] 3 673  
 R v Dixon [1999] 3 889, CA  
 R v Doherty (Note) [1971] 3 622, CA  
     Considered, R v Dixon [1999] 3 889  
 R v DPP, ex p Duckenfield [1999] 2 873, QBD  
 R v DPP, ex p Kebeline [1999] 4 801, QBD and HL  
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 R v DPP, ex p Rechachi. See R v DPP, ex p Kebeline  
 R v Ealing District Health Authority, ex p Fox [1993] 3 170, QBD  
     Considered, R v Mental Health Review Tribunal, ex p Hall [1999] 3 132  
 R v Ealing London BC, ex p Surdonja [1999] 1 566, QBD  
 R v F Howe & Son (Engineers) Ltd [1999] 2 249, CA  
 R v Governor of Whitemoor Prison, ex p Main. See R v Secretary of State for the Home Dept, ex p Simms  
 R v Governor of Winchester Prison, ex p Roddie [1991] 2 931, QBD  
     Considered, R v Crown Court at Manchester, ex p McDonald [1999] 1 805  
 R v Harvey [1999] 1 710, CA  
 R v Hayes. See R v Liddle  
 R v Howells [1999] 1 50, CA  
 R v Immigration Appeal Tribunal, ex p Jeyanthan [1999] 3 231, CA  
 R v Immigration Appeal Tribunal, ex p Shah [1998] 4 30, CA  
     Reversed [1999] 2 545, HL  
 R v Inner South London Coroner, ex p Douglas-Williams [1999] 1 344, CA  
     Leave to appeal refused [1999] 3 xix, HL  
 R v Jackson [1999] 1 572, CA  
 R v Kelly, A-G's Reference (No 53 of 1998) [1999] 2 13, CA  
     Leave to appeal refused [1999] 3 xix, HL  
 R v Kensington and Chelsea Royal London BC, ex p Kujtim [1999] 4 161, CA  
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 R v Kirk [1999] 4 698, CA  
 R v Leask. See R v Lowe  
 R v Legal Aid Board, ex p Parsons [1999] 3 347, CA  
 R v Leicester City Justices, ex p Barrow [1991] 2 437, QBD  
     Reversed [1991] 3 935, CA  
     Applied, R v Bow County Court, ex p Pelling [1999] 2 582  
     Considered, R v Bow County Court, ex p Pelling [1999] 4 751  
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     Considered, R v St Helens Justices, ex p Jones [1999] 2 73  
 R v Lord Chancellor, ex p Lightfoot [1998] 4 764, QBD  
     Affirmed [1999] 4 583, CA  
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     Distinguished, R v Lord Chancellor, ex p Lightfoot [1999] 4 583  
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     Considered, R v Mental Health Review Tribunal, ex p Hall [1999] 4 883  
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 R v M [1998] 2 939, CA  
     Considered, R v Kelly, A-G's Reference (No 53 of 1998) [1999] 2 13  
 R v Manning [1998] 4 876, CA  
     Leave to appeal refused [1999] 3 xix, HL  
 R v Medway [1976] 1 527, CA  
     Considered, R v Dixon [1999] 3 889  
 R v Mental Health Review Tribunal, ex p Hall [1999] 3 132, QBD  
     Reversed in part [1999] 4 883, CA  
 R v Ministry of Defence, ex p Smith [1995] 4 427, QBD  
     Affirmed [1996] 1 257, CA  
     Leave to appeal refused [1996] 2 xix, HL  
     Applied, R v Lord Saville of Newdigate, ex p A [1999] 4 860  
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 R v Secretary of State for the Environment, ex p Greenpeace Ltd [1994] 4 352, QBD  
     Distinguished, R v North Yorkshire CC, ex p Brown [1999] 1 969  
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     Considered, R v Local Comr for Administration in North and North East England, ex p Liverpool City Council [1999] 3 85  
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     Considered, R v Secretary of State for the Home Dept, ex p Adan [1999] 4 774  
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     Leave to appeal refused [1999] 3 xix, HL  
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     Dictum applied, General Mediterranean Holdings SA v Patel [1999] 3 673  
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     Reversed [1999] 3 400, HL  
     Dictum applied, General Mediterranean Holdings SA v Patel [1999] 3 673  
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     Affirmed [1999] 4 906, HL  
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     Considered, R v Kensington and Chelsea Royal London BC, ex p Kujtim [1999] 4 161  
 R v Sheffield Justices, ex p Turner [1991] 1 858, QBD  
     Applied, R v Crown Court at Manchester, ex p McDonald [1999] 1 805  
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     Leave to appeal given HL 9 November 1999  
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     Applied, R v Inner South London Coroner, ex p Douglas-Williams [1999] 1 344  
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     Considered, Stevenson v Rogers [1999] 1 613  
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     Leave to appeal refused [1999] 3 xix, HL  
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     Overruled, Bolikiah (Prince Jefri) v KPMG (a firm) [1999] 1 517  
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     Affirmed [1999] 2 Comm 577, CA  
 Rechachi, ex p, R v DPP. *See* R v DPP, ex p Kebeline  
 Recher's Will Trusts, Re [1971] 3 401, Ch D  
     Considered, Artistic Upholstery Ltd v Art Forma (Furniture) Ltd [1999] 4 277  
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     Considered, Pearce v Ove Arup Partnership Ltd [1999] 1 769  
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     Reversed in part [1999] 3 897, HL  
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     Distinguished, Satnam Investments Ltd v Dunlop Heywood & Co Ltd [1999] 3 652  
 Reichhold Norway ASA v Goldman Sachs International [1999] 1 Comm 40, QBD  
     Affirmed [1999] 2 Comm 174, CA  
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 Reynolds v Times Newspapers Ltd [1998] 3 961, CA  
     Affirmed [1999] 4 609, HL  
 Richardson v Pitt-Stanley [1995] 1 460, CA  
     Applied, Burns v Shuttlehurst Ltd [1999] 2 27

Ridehalgh v Horsefield [1994] 3 848, CA

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Rochdale BC, Allen v. See Allen v Rochdale BC

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Rowe, Glenister v. See Glenister v Rowe

Royal Bank of Scotland plc, Turner v. See Turner v Royal Bank of Scotland plc

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S, C v. See C v S

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Affirmed [1999] 4 321, [1999] 2 Comm 353, CA

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Reversed [1951] 2 473, HL

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Considered, R v Crown Court at Winchester, ex p B (a minor) [1999] 4 53

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Distinguished, Baxter v Camden London BC [1999] 1 237

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Securum Finance Ltd v Ashton [1999] 2 Comm 331, Ch D

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Affirmed [1982] 1 698, CA

Reversed [1983] 1 226, HL

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| Sch 1, art 22  | .. | [1999] 1 Comm 445                                                 |
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| Sch 1, art 57  | .. | [1999] 1 Comm 737                                                 |
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# Criminal Appeal Act 1968

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| Government of Wales Act 1998                               |    |    |        |                    |            |
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| Insurance Companies Act 1982                               |    |    |        |                    |            |
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| Legal Aid Act 1988                                         |    |    |        |                    |            |
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Generally. *See* **Shipping** (Carriage by sea).

### Contract—

#### Carriage of goods—

Action arising out of carriage—Defendant contracting to carry goods by road from England to the Netherlands—Defendant leaving lorry unattended in Netherlands and goods stolen—Defendant commencing proceedings in Netherlands against consignee for declaration of non-liability—Consignee's assignee subsequently issuing proceedings against defendant in England in respect of lost goods—Whether English action contrary to jurisdiction provisions of convention on carriage of goods by road—Carriage of Goods by Road Act 1965, Sch, art 31. **Frans Maas Logistics (UK) Ltd v CDR Trucking BV** [1999] 1 Comm 737, QBD.

Carriage by sea—Generally. *See* **Shipping**.

Conditions—Exception clause—Reasonableness—Clause in standard form contract limiting liability—Whether limitation clause reasonable—British International Freight Association Standard Trading Conditions (1989), cl 13(B), 29(A)(ii)—Unfair Contract Terms Act 1977, s 1. **Overseas Medical Supplies Ltd v Orient Transport Services Ltd** [1999] 1 Comm 981, CA.

## CARRIERS (cont)

Limitation of liability—

Loss or damage to goods—

Claimant storing alcoholic drinks in bond at its warehouse—Third party engaging claimant to carry cargo of spirits from its warehouse—Claimant sub-contracting carriage to defendant—Goods being stolen in transit and claimant incurring liability for duty—Whether limitation of liability clause applying irrespective of defendant's negligence—Whether limitation clause including customs duty payable by claimant—Road Haulage Association Conditions 1982, cl 9, 11—Road Haulage Association Conditions 1991, cl 9, 11, 18. **Cert plc v George Hammond plc** [1999] 2 Comm 976, QBD.

## CAUSE OF ACTION

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## CERTIFICATE

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## CHAMPERTY

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## CHARGE

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## CHARGING ORDER

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## CHARITY

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Parties—

Official Custodian for Charities—Charity's property being vested in Official Custodian for Charities—Trustees of charity bringing claim in their own names for possession of property without joining Official Custodian—Whether proceedings properly constituted—Charities Act 1993, ss 22, 33. **Muman v Nagasena** [1999] 4 178, CA.

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Time charterparty. *See* **Shipping** (Time charterparty).

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Bank. *See* **Bank** (Cheque—Conversion).

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Obtaining pecuniary advantage by deception. *See* **Bank** (Cheque—Conversion).

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Bank's duties—

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## CHILD

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Adoption. *See* **Adoption**.

Care—

Local authority—

Care plan—Requirement for twin-track approach. **Re D and another (children) (care plan: twin-track planning)** [1999] 4 893, Fam D.

Negligence—Local authority's duty of care. *See* **Negligence** (Duty to take care—Existence of duty—Children—Local authority).

Family proceedings. *See* **Family proceedings**.

Missing child—

Whereabouts—

Disclosure of whereabouts. *See* **Whereabouts**—Disclosure of whereabouts—Child reported missing, *post*.

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Disclosure of whereabouts of child. *See* **Whereabouts**—Disclosure of whereabouts, *post*.

Residence order—

Family proceedings. *See* **Family proceedings** (Orders in family proceedings—Residence order).

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Change of surname. *See* **Minor** (Change of surname).

Whereabouts—

Disclosure of whereabouts—

Child reported missing—Police finding child with mother in women's refuge and informing father, but refusing to disclose address—Judge ordering disclosure by police to court—Whether judge right to do so—Family Law Act 1986, s 33. **S v S (Chief Constable of West Yorkshire Police intervening)** [1999] 1 281, CA.

## CHURCH

Generally. *See* **Ecclesiastical law**.

## CIVIL PROCEDURE

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Generally. *See* **Costs**.

Generally. *See* **Practice**.

## CO-SURETIES

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## COMMERCIAL AGENT

*See* **Agent** (Commercial agent).

## COMMERCIAL CASES

Bristol—

Practice. *See* **Practice** (Commercial cases—Bristol).

## COMMERCIAL COURT

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Civil Procedure Rules. *See* **Practice** (Commercial Court—Civil Procedure Rules).

## COMMITTAL

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Generally. *See* **Contempt of court** (Committal).

Extradition. *See* **Extradition** (Committal).

Proceedings—

Generally. *See* **Criminal law** (Committal).

Sentence—

Generally. *See* **Magistrates** (Committal for sentence).

## COMMON MARKET

*See* **European Community**.

## COMMONS

Registration—

Town or village green—

User as of right—Villagers using glebe for informal recreation—Parish council applying to register glebe as village green on basis of user as of right—Whether user as of right required belief by villagers that they enjoyed right to exclusion of all other people—Whether informal recreation a pastime—Commons Registration Act 1965, s 22(1). **R v Oxfordshire County Council, ex p Sunningwell Parish Council** [1999] 3 385, HL.

Right of common—

Common of grazing—

Farm enjoying right of common of grazing—Owners registering right in respect of fixed number of animals—Farm owner selling grazing rights to plaintiffs—Farm sold to defendants—Whether a right of common of grazing appurtenant to land could be severed from that land—Whether levancy and couchancy abolished—Law of Property Act 1925, s 187(1)—Commons Registration Act 1965, s 15(1). **Bettison v Langton** [1999] 2 367, CA.

## COMPANY

Administration order—

Petition—

Effect of presentation of petition—Company holding lease over development property—Creditor petitioning for administration order to avert company's liquidation—Landlord purporting to forfeit lease by peaceable re-entry—Whether landlord could forfeit lease after presentation of petition for administration order—Insolvency Act 1986, s 10(1). **Re Lomax Leisure Ltd** [1999] 3 22, Ch D.

Compulsory winding up—

Disclaimer of onerous property—

Waste management licence—Whether liquidator entitled to disclaim waste management licence as onerous property—Insolvency Act 1986, ss 178, 436—Environmental Protection Act 1990, s 35(11). **Re Celtic Extraction Ltd (in liq), Re Bluestone Chemicals Ltd (in liq)** [1999] 4 684, CA.

Petition by judgment creditor—

Powers of court on hearing of petition. *See* Compulsory winding up—Powers of court on hearing of petition, *post*.

Powers of court on hearing of petition—

Judgment creditor's petition—Company claiming it had genuine and serious counterclaim exceeding petitioner's debt—Whether court should dismiss or stay petition—Insolvency Act 1986, s 125(1). **Re Bayoil SA, Seawind Tankers Corp v Bayoil SA** [1999] 1 374, CA.

Provisional liquidator—

Expenses—Company continuing to trade during provisional liquidation and incurring tax liabilities—Whether tax liabilities constituting expenses of winding up—Whether payment of tax liabilities having priority over payment of expenses of liquidation—Insolvency Act 1986, s 156—Insolvency Rules 1986, r 4.218. **Re Grey Marlin Ltd** [1999] 4 429, Ch D.

Department of Trade and Industry investigation. *See* Investigation by Department of Trade and Industry, *post*.

Director—

Disqualification—

Application by disqualified director for leave to continue to act as director of a company—Whether necessary for applicant to prove need on his part to act as director or need on part of company to be able to have his services as director—Whether leave should be granted—Company Directors Disqualification Act 1986, s 17. **Re Barings plc (No 3), Secretary of State for Trade and Industry v Baker** [1999] 1 1017, Ch D.

Misdirection—Role of High Court on application for judicial review—Extent of coroner's discretion not to leave possible verdict to jury—Whether desirable in interests of justice to quash verdict. **R v Inner South London Coroner, ex p Douglas-Williams** [1999] 1 344, CA.

## COMPANY (cont)

### Director (cont)—

#### Disqualification (cont)—

Stay of proceedings—Abuse of process—Double jeopardy principle—Director having successfully resisted disciplinary proceedings brought by Securities and Futures Authority on substantially same charges—Whether disqualification proceedings an abuse of process—Whether proceedings should be stayed—Company Directors Disqualification Act 1986. **Re Barings plc (No 2), Secretary of State for Trade and Industry v Baker** [1999] 1 311, Ch D and CA.

#### Disclaimer of onerous property—

Voluntary winding up. *See* Voluntary winding up—Disclaimer of onerous property, *post*.

#### Foreign company—

Panamanian company issuing writ in relation to an alleged contract—

Company subsequently dissolved, but continuing to exist under Panamanian law for three years for certain limited purposes—Whether company remaining in existence beyond three-year period for purpose of resolving proceedings. **Phoenix Marine Inc v China Ocean Shipping Co** [1999] 1 Comm 138, QBD.

#### Income tax—

##### Profits—

Deduction in computing profits. *See* **Income tax** (Deduction in computing profits).

#### Investigation by Department of Trade and Industry—

##### Affairs of company—

Duty of officers and agents of company to give information—Ex-director refusing to give confidentiality undertaking sought by inspectors or to answer questions—Whether inspectors entitled to require confidentiality undertaking—Whether ex-director justified in refusing to answer questions—Whether any limits on the right of inspectors to require assistance. **Re an inquiry into Mirror Group Newspapers plc** [1999] 2 641, Ch D.

#### Lease—

##### Disclaimer—

Voluntary winding up. *See* Voluntary winding up—Disclaimer of onerous property—Lease, *post*.

#### Liquidator—

##### Compulsory winding up—

Provisional liquidator. *See* Compulsory winding up—Provisional liquidator, *ante*.

#### Member—

Unfair prejudice to member's interests—

Majority shareholder terminating equal profit-sharing of minority shareholder—Majority shareholder repudiating alleged agreement for allotment of more shares to minority shareholder—Whether company's affairs conducted in manner unfairly prejudicial to minority shareholder's interests—Companies Act 1985, s 459(1). **Re a company (No 00709 of 1992), O'Neill v Phillips** [1999] 2 961, HL.

#### Oversea company—

##### Service on overseas company—

Service of writ at London branch of foreign bank—Plaintiffs engaging foreign bank to market shares—Dispute arising between parties and plaintiff serving writ on bank's London branch—Whether process in respect of carrying on of London branch's business—Whether process had to be related in substance to carrying on of London branch's business—Companies Act 1985, s 694A(2). **Saab v Saudi American Bank** [1999] 4 321. [1999] 2 Comm 353, CA.

#### Pension—

##### Pension scheme—

Generally. *See* **Pension** (Pension scheme—Company pension scheme).

#### Petition—

Administration order. *See* Administration order—Petition, *ante*.

##### Compulsory winding up—

Petition by judgment creditor. *See* Compulsory winding up—Petition by judgment creditor, *ante*.

#### Preferential payments—

Winding up. *See* Winding up—Preferential payments, *post*.

#### Profits—

##### Income tax—

Deduction in computing profits. *See* **Income tax** (Deduction in computing profits).

#### Provisional liquidation. *See* Compulsory winding up—Provisional liquidator, *ante*.

#### Service of writ on company—

Overseas company. *See* Overseas company—Service on overseas company, *ante*.

#### Subsidiary company—

##### Meaning—

Holding company owning shares in subsidiary—Holding company agreeing to sell shares to another company—Whether holding company holding voting rights in fiduciary capacity—Companies Act 1985, ss 736, 736A, [1999] 1 356, CA.

Unfair prejudice to members. *See* Member—Unfair prejudice to member's interests, *ante*.

#### Voluntary winding up—

##### Disclaimer of onerous property—

Lease—Disclaimer of lease by liquidators of lessee—Whether landlord entitled to prove in liquidation for total amount of loss suffered in consequence of disclaimer—Whether extent of loss to be ascertained by applying market yield—Whether discount applicable to amount proved for future rent—Insolvency Act 1986, s 178—Insolvency Rules 1986, r 11.13. **Re Park Air Services plc, Christopher Moran Holdings Ltd v Bairstow** [1999] 1 673, HL.

Waste management licence—Whether waste management licence 'property'—Whether liquidator entitled to disclaim waste management licence—Insolvency Act 1986, s 178—Environmental Protection Act 1990, s 35. **Re Mineral Resources Ltd, Environment Agency v Stout** [1999] 1 746, Ch D.

Preferential payments. *See* Winding up—Preferential payments, *post*.

#### Winding up—

Compulsory winding up. *See* Compulsory winding up, *ante*.

##### Preferential payments—

Voluntary winding up—Whether court having power to authorise administrators of company going into voluntary liquidation to pay persons who would be preferential creditors on a compulsory liquidation sums due if company put into compulsory liquidation—Insolvency Act 1986, s 18. **Re Mark One (Oxford Street) plc** [1999] 1 608, Ch D.



## **COMPANY (cont)**

Winding up (cont)—

Voluntary winding up. *See* Voluntary winding up, *ante*.

## **COMPENSATION**

Criminal injuries—

Entitlement to compensation—

Armed forces—Discretionary *ex gratia* scheme introduced by Ministry of Defence to compensate military personnel for criminal injuries sustained abroad—Injuries resulting from war operations or military activity by warring factions excluded from scheme—Soldier taking part in peacekeeping operations in Bosnia injured when single round fired at his accommodation block by Serbian tank—Whether soldier entitled to compensation—Whether criteria of scheme irrational—Whether criteria applied unfairly. **R v Ministry of Defence, ex p Walker** [1999] 3 935, CA.

Reduction of award or rejection of claim—

Character and way of life of victim—Victim having criminal convictions—Victim assaulted and injured at work—Board determining victim eligible for reduced award—Board making interim award pending calculation of compensation—Victim committing further criminal offences—Board considering victim's case *afresh* and deciding to make no award—Whether board having power to reconsider victim's eligibility—Whether board having to give reasons in writing—Criminal Injuries Compensation Scheme 1990, paras 6(c), 12. **R v Criminal Injuries Compensation Board, ex p Moore** [1999] 2 90, QBD.

## **COMPETITION**

European Community rules. *See* **European Community** (Rules on competition).

## **COMPROMISE**

Contract. *See* **Contract** (Compromise).

Divorce—

Ancillary relief. *See* **Divorce** (Ancillary relief—Compromise).

## **COMPULSORY WINDING UP**

Company. *See* **Company** (Compulsory winding up).

## **COMPUTER**

Computer records—

Non-contentious probate—

Grant of representation. *See* **Probate** (Practice—Non-contentious probate—Grant of representation—Computer records).

Misuse of computer—

Criminal proceedings. *See* **Criminal law** (Computer—Misuse of computer).

## **CONCURRENT TORTFEASORS**

*See* **Tort** (Concurrent tortfeasors).

## **CONFESSION**

Criminal proceedings—

Admissibility—

Generally. *See* **Criminal evidence** (Admissions and confessions).

## **CONFIDENTIAL INFORMATION**

Accountant—

Conflict of interest. *See* **Accountant** (Duty—Conflict of interest—Duty of confidentiality to client).

Banker/client relationship. *See* **Bank** (Banker/client relationship—Duty of bank—Duty of confidentiality).

Disclosure—

Confidential document—

Privilege—Generally. *See* **Discovery** (Privilege—Confidential documents).

Prevention of disclosure—

Injunction. *See* Injunction against disclosure of information, *post*.

Injunction against disclosure of information—

Police interview—

Police interviewing nurse following death of patient but not bringing charges—Nursing regulatory body investigating allegations made against nurse—Police considering whether to disclose contents of nurse's interview to regulatory body—Whether police entitled to disclose contents of interview. **Woolgar v Chief Constable of the Sussex Police** [1999] 3 604, CA.

Medical practitioner—

Disclosure of confidential information—

Generally. *See* **Medical practitioner** (Doctor and patient—Disclosure of confidential information).

Solicitor—

Conflict of interest. *See* **Solicitor** (Duty—Conflict of interest).

## **CONFISCATION ORDER**

Generally. *See* **Sentence** (Confiscation order).

## **CONFLICT OF INTEREST**

Accountant—

Duty. *See* **Accountant** (Duty—Conflict of interest).

Jurisdiction—

Civil and commercial matters—

Special jurisdiction in matters relating to a contract—Action founded on separate obligations of equal rank arising from same contract—Obligations to be performed in different contracting states of Brussels Convention—Whether court situated in place of performance of one obligation also having jurisdiction over obligation to be performed in other contracting state—Civil Jurisdiction and Judgments Act 1982, Sch 1, arts 2, 5(1). **Leathertex Divisone Sintetici SpA v Bodetex BVBA** [1999] 2 Comm 769, ECJ.

Solicitor—

Duty. *See* **Solicitor** (Duty—Conflict of interest).

## CONFLICT OF LAWS

Carriage of good by sea. *See* Shipping—Carriage of goods by sea, *post*.

Civil and commercial matters—

Jurisdiction—

Challenge to jurisdiction. *See* Jurisdiction—Challenge to jurisdiction—Civil and commercial matters, *post*.

Generally. *See* Jurisdiction—Civil and commercial matters, *post*.

Contract—

Proper law of contract—

Bank—Bank operating scheme allowing subscribers to issue cheques drawn on any branch in any currency—Governing law clause providing for New York law but for local law in respect of disputes over payment instruments—Subscriber suing bank for honouring of forged cheques by London branch—Parties disputing effectiveness of certain terms of agreement—Whether action governed by New York law or English law. **Centrax Ltd v Citibank NA** [1999] 1 Comm 557, CA.

Insurance and reinsurance policies—Taiwanese insurers issuing policy in respect of factory in Taiwan—Policy providing that all matters not stipulated in policy to be handled in accordance with Taiwanese law—Insurers reinsuring with London reinsurers and reinsurance slip providing that type of cover was 'as original'—Whether reinsurance policy governed by Taiwanese or English law. **Gan Insurance Co Ltd v Tai Ping Insurance Co Ltd** [1999] 2 Comm 54, CA.

Foreign judgment—

Enforcement—

Co-defendants in proceedings in Florida entering default judgments in respect of cross-claims against defendant—Whether defendant submitting to jurisdiction of Florida court in relation to cross-claims—Whether default judgments enforceable in English court. **Murthy v Sivajothi** [1999] 1 721, CA.

Foreign law—

Revenue law—

Enforcement—Defendant owning Danish companies—Assets of companies being disposed of to finance purchase of defendant's shares—Companies being put into liquidation and Danish tax authorities appointing liquidator—Danish tax authorities making claim against companies and funding action by companies against defendant in England for restitution of assets—Defendant applying to have action struck out as one for indirect enforcement of foreign revenue law—Whether indirect revenue claim a 'revenue matter' for purposes of Brussels Convention—Whether rule against enforcement of indirect foreign revenue claim contrary to European Community law—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 1. **QRS 1 Aps v Frandsen** [1999] 3 289, CA.

Jurisdiction—

Challenge to jurisdiction—

Civil and commercial matters—Proceedings involving same cause of action issued in England and in Austria—Both sets of proceedings commenced before Lugano Convention taking effect between United Kingdom and Austria—Whether English court required by convention to stay proceedings against Austrian defendants—Civil Jurisdiction and Judgments Act 1982, Sch 3C, arts 21, 54. **Davy International Ltd v Voest Alpine Industrieanlagenbau GmbH** [1999] 1 103, CA.

Claim by insurer—Insurer domiciled in Lithuania repudiating liability to English company—Insured claiming against insurer—Insurer serving defence and counterclaim—Insurer seeking to join further parties as defendants to counterclaim—Whether court having jurisdiction over counterclaim—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 11. **Jordan Grand Prix Ltd v Baltic Insurance Group** [1999] 1 289, HL.

Contracts between parties domiciled in convention countries—Plaintiffs claiming jurisdiction of English court over defendant domiciled in Germany—Defendant supplying machines to plaintiffs for use in their factory in England—Contracts providing for delivery in Germany—Plaintiffs contending after installation that machines not fit for their purpose and suing in England—Defendant applying for stay of proceedings—Whether place of performance of obligation was Germany or England—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 5. **Viskase Ltd v Paul Kiefel GmbH** [1999] 3 362, CA; [1999] 1 Comm 641, CA.

Copyright—Infringement—Breach of Dutch copyright—Infringing acts taking place in The Netherlands—Plaintiff bringing action in England against defendant domiciled in United Kingdom and other foreign defendants—Whether action justiciable in England—Whether infringement of Dutch copyright actionable as tort under English law—Whether Brussels Convention 1968 excluded by Berne Convention 1886—Whether plaintiff's claim bound to fail on the facts—Civil Jurisdiction and Judgments Act 1982, Sch 1, arts 2, 6. **Pearce v Ove Arup Partnership Ltd** [1999] 1 769, CA.

Plaintiff working as solicitor for group of companies but having employment contract with Irish member of group—Plaintiff relocating from London to Madrid—Plaintiff resigning and suing for constructive dismissal in England—Spanish member of group suing plaintiff in Spain for breach of alleged employment contract—Whether English court should grant anti-suit injunction in respect of Spanish proceedings—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 21. **Turner v Grovit** [1999] 3 616, CA; [1999] 1 Comm 929, CA.

Civil and commercial matters—

Challenge to jurisdiction. *See* Jurisdiction—Challenge to jurisdiction—Civil and commercial matters, *ante*.

Interim relief—Arbitration—German charterer failing to pay invoices for cargo space—Dutch shipping line instituting arbitration proceedings under contract and applying to Dutch court for payment of outstanding sums as interim relief—Whether jurisdiction to hear applications for provisional measures could be invoked notwithstanding arbitration agreement—Whether order for payment of contractual consideration could be provisional measure—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 24. **Van Uden Maritime BV (trading as Van Uden Africa Line) v Kommanditgesellschaft in Firma Deco-Line (Case C-391/95)** [1999] 1 Comm 385; [1999] EC 258, ECJ.

Special jurisdiction in matters relating to a contract—Action founded on separate obligations of equal rank arising from same contract—Obligations to be performed in different contracting states of Brussels Convention—Whether court situated in place of performance of one obligation also having jurisdiction over obligation to be performed in other contracting state—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 2, 5(1). **Leathertex Divisione Sintetici SpA v BodeTex BVBA** [1999] 2 Comm 769, ECJ.

Special jurisdiction in matters relating to a contract—Criteria for determining place of performance of obligation in question—Convention on jurisdiction and the enforcement of judgments in civil and commercial matters 1968, art 5(1). **GIE Groupe Concorde v The Suhadiwarno Panjan (master)** [1999] 2 Comm 700, CA.

## CONFLICT OF LAWS (cont)

### Jurisdiction (cont)—

#### Exclusive jurisdiction—

Defendant agreeing orally to purchase bonds—Plaintiff subsequently purporting to confirm terms in writing—Written agreement containing English exclusive jurisdiction clause—Defendant claiming that written agreement failed to reflect terms of oral agreement and alleging fraud—Defendant's investment manager impeaching agreement in Californian litigation—Plaintiff seeking injunction to enforce exclusive jurisdiction clause—Whether an exclusive jurisdiction clause should be enforced where it was impeached on grounds of fraud or mutual mistake. **Credit Suisse First Boston (Europe) Ltd v Seagate Trading Co Ltd** [1999] 1 Comm 261, QBD.

English and Swiss companies collaborating on two projects governed by separate commercial agreements—Parties signing quality assurance agreement in respect of one project and providing for Swiss courts to have jurisdiction over 'Court Suits' or other disputes—Draft agreements in relation to other project containing identical jurisdiction clauses—English company bringing proceedings in England against Swiss company for wrongful termination of commercial agreements governing both projects—Whether Swiss courts having exclusive jurisdiction over the dispute—Civil Jurisdiction and Judgments Act 1982, Sch 3C, art 17. **Implants International Ltd v Stratec Medical** [1999] 2 Comm 933, Leeds Mercantile Ct.

Plaintiff selling bonds to defendant—Purchase agreements stating that defendant submitted to jurisdiction of English courts—Plaintiff suing defendant in England for outstanding payments—Defendant suing plaintiff and affiliated companies in New York in connection with same transaction—Whether defendant subject to English exclusive jurisdiction regime—Whether defendant's New York claims falling within scope of regime—Whether defendant should be restrained from pursuing New York litigation. **Credit Suisse First Boston (Europe) Ltd v MLC (Bermuda) Ltd** [1999] 1 Comm 237, QBD.

Seller agreeing to sell cargo to buyer under contract containing English exclusive jurisdiction clause—Bank suing buyer in France as assignee of contract debt owed to seller—Whether assignee of contract debt bound by exclusive jurisdiction clause in contract—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 17. **Glencore International AG v Metro Trading International Inc (Banque Trad-Crédit Lyonnais (France) SA, third party), Metro Trading International Inc v Itochu Petroleum Co (S) Pte Ltd (Banque Trad-Crédit Lyonnais (France) SA, third party)** [1999] 2 Comm 899, QBD.

#### Non-exclusive jurisdiction—

Contract containing non-exclusive English jurisdiction clause—Californian-based party commencing proceedings for breach of contract in California—Other party bringing proceedings in England for recovery of sums allegedly due under contract—Californian-based party seeking stay of English proceedings on grounds of forum non conveniens—Whether court had jurisdiction to grant stay on forum grounds—Whether stay should be granted—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 17. **Mercury Communications Ltd v Communication Telesystems International** [1999] 2 Comm 33, QBD.

### Revenue law—

#### Foreign law—

Enforcement. *See* Foreign law—Revenue law—Enforcement, *ante*.

### Shipping—

#### Carriage of goods by sea—

Vessel carrying goods from Wales to Italy under bills of lading incorporating Hague-Visby Rules—Consignees alleging that goods damaged because hatches not watertight or battened down properly at commencement of voyage—Consignees suing Dutch owners of vessel in England—Whether Wales or Italy was place of performance of principal obligation under bills of lading—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 5(1)—Carriage of Goods by Sea Act 1971, Sch, art III. **RPS Prodotti Siderurgici SRL v Owners and/or demise charterers of The Sea Maas, The Sea Maas** [1999] 1 Comm 945, QBD.

### Stay of proceedings—

#### Lis pendens—

Proceedings involving same cause of action and between same parties—Loss of goods carried by road—Whether specialised convention on carriage of goods by road took precedence over Brussels Convention—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 57. **Frans Maas Logistics (UK) Ltd v CDR Trucking BV** [1999] 1 Comm 737, QBD.

Proceedings involving same cause of action and between same parties—Meaning of same cause of action—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 21. **Haji-Ioannou v Frangos** [1999] 2 Comm 865, QBD.

Seller agreeing to sell cargoes to two buyers—Third party claiming title to goods and bringing proceedings against seller in England—Seller's bank bringing proceedings in France against seller and buyers—First buyer joining claimant in English proceedings as third party to French proceedings—Claimant in English proceedings joining both buyers as defendants to those proceedings—Second buyer joining bank as third party to English proceedings—Bank and first buyer applying for stay of English proceedings—Whether English and French proceedings involving same cause of action and same parties—Whether French court first seised—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 21. **Glencore International AG v Metro Trading International Inc (Banque Trad-Crédit Lyonnais (France) SA, third party), Metro Trading International Inc v Itochu Petroleum Co (S) Pte Ltd (Banque Trad-Crédit Lyonnais (France) SA, third party)** [1999] 2 Comm 899, QBD.

Various parties claiming title to proceeds of sale of cargoes of oil—Claimant bringing proceedings in England against seller and buyer of cargoes—Another claimant bringing proceedings against buyer in France—Buyer applying for interpleader relief in English proceedings—Claimant in French proceedings applying for stay of interpleader proceedings—Whether French and English proceedings involving same cause of action—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 21. **Glencore International AG v Shell International Trading and Shipping Co Ltd** [1999] 2 Comm 922, QBD.

## CONSTRUCTION (INTERPRETATION)

### Contract—

Exception clause. *See* **Contract** (Construction—Exception clause).

Generally. *See* **Contract** (Construction).

Insurance contract. *See* **Insurance** (Contract of insurance—Construction of terms).

Statute. *See* **Statute** (Construction).



## CONSTRUCTIVE NOTICE

Undue influence. *See* **Equity** (Undue influence—Constructive notice).

## CONSTRUCTIVE TRUST

*See* **Trust and trustee** (Constructive trust).

## CONSUMER CREDIT

Agreement—

Hire charges—

Plaintiff's car damaged in accident with defendant's car—Plaintiff entering into agreement for hire of car while own car repaired—Agreement entitling plaintiff to postpone payment of hire charges until conclusion of action for damages against defendant—Plaintiff seeking to recover hire charges as damages—Whether agreement a consumer credit agreement—Whether agreement enforceable against plaintiff—Consumer Credit Act 1974, ss 8, 60. **Dimond v Lovell** [1999] 3 1, CA.

## CONSUMER PROTECTION

Consumer credit. *See* **Consumer credit**.

European Community—

Generally. *See* **European Community** (Consumer protection).

## CONTEMPT OF COURT

Committal—

Breach of injunction—

Breach of terms of suspended sentence—Breach committed by entering protected military area and removing byelaw notices—Byelaws declared invalid by competent court—Whether invalidity of byelaws providing justification for defendant's actions. **Secretary of State for Defence v Percy** [1999] 1 732, Ch D.

Costs—

Respondent committing unwitting and technical breach of court order—Applicant seeking respondent's committal for contempt of court—Appropriate order as to costs. **Adam Phones Ltd v Goldschmidt** [1999] 4 486, Ch D.

County court—

Jurisdiction—Mother arguably in breach of contact order indorsed with penal notice—Father not applying for mother's committal for contempt—Judge initiating committal proceedings of his own motion—Whether judge having power to do so—Whether judge right to initiate committal proceedings—County Courts Act 1984, s 38. **Re M and ors (minors)** (breach of contact order: committal) [1999] 2 56, CA.

## CONTINGENCY FEE

Solicitor. *See* **Solicitor** (Costs—Contingency fee).

## CONTRACT

Acceptance. *See* Offer and acceptance—Acceptance, *post*.

Bond—

Performance bond—

Construction—Guarantor providing performance bond in respect of contractor's obligations to employer—Bond providing for employer to give written notice of any breach of contract and for expert to determine matter if parties unable to agree—Notice given by employer and expert making determination—Employer giving fresh notice alleging further breaches but failing to identify acts and omissions alleged to be breaches—Whether fresh notice valid—Whether employer entitled to give notice in respect of breach already subject to decision by expert. **Odebrecht Oil and Gas Services Ltd v North Sea Production Co Ltd** [1999] 2 Comm 405, QBD.

Breach—

Damages. *See* Damages for breach, *post*.

Service contract. *See* **Employment** (Contract of service—Breach of contract).

Building contract—

Generally. *See* **Building contract**.

Carriage—

Goods. *See* **Carriers** (Contract—Carriage of goods).

Certainty. *See* Enforceability—Certainty of terms, *post*.

Charterparty. *See* **Shipping** (Charterparty).

Compromise—

Duty of disclosure—

Employees signing agreement settling all claims against employer in consideration of payment by employer—Employees seeking rescission of agreement on grounds of non-disclosure by employer of breaches of employment contract—Whether agreement was compromise or free-standing release—Whether employer under duty of disclosure. **Bank of Credit and Commerce International SA (in liquidation) v Ali** [1999] 2 1005, Ch D.

Condition—

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Charterparty—

Generally. *See* **Shipping** (Charterparty—Conditions and warranties).

Conflict of laws. *See* **Conflict of laws** (Contract).

Construction—

Contract between investor and bank for management of investor's accounts—

Construction of terms to make good commercial sense—Manner of exercise of contractual rights—Whether notice of exercise of contractual right should specify term of contract giving right—Whether right to close out without notice in certain circumstances implied right to close out on notice in other circumstances. **Zelouf v Republic National Bank of New York** [1999] 2 Comm 215, QBD.



## CONTRACT (cont)

### Construction (cont)—

#### Exception clause—

Defendants agreeing to sell machine to plaintiffs under model form agreement—Agreement giving plaintiffs right to reject machine if it failed to meet specifications and requiring defendants to remedy defects appearing within 12 months of delivery—Contract providing that obligation to remedy defect was in lieu of conditions implied by law as to fitness for purpose and excluding liability for defects in contract, tort or otherwise—Whether exclusion applied to express performance guarantees—Whether parties had contracted on defendants' written standard terms of business—Unfair Contract Terms Act 1977, s 3—Institution of Mechanical Engineers Model Form of General Conditions of Contract Form C (1975 edition), condition 11. **British Fermentation Products Ltd v Compair Reavell Ltd** [1999] 2 Comm 389, QBD.

Performance bond. *See* Bond—Performance bond—Construction, *ante*.

### Consumer credit agreement. *See* Consumer credit.

### Damages for breach—

#### Measure of damages—

Defendant granting licensee fixed-term licence to operate discotheque from its premises—Licensee assigning licence to company which he controlled—Licensee agreeing to sell shares in company to third party—Defendant closing discotheque in breach of licence agreement before completion of share sale—Licensee and company suing for lost profits over remainder of term—Judge assessing damages by reference to price agreed for sale of company's shares—Whether judge's assessment of quantum correct. **ELO Entertainments Ltd v Grand Metropolitan Retailing Ltd (t/a Clifton Inns)** [1999] 1 Comm 473, CA.

#### Sale of goods—

Loss directly and naturally resulting from breach—Exclusion—Seller agreeing to sell Thai tapioca to Turkish buyer—Turkish government prohibiting import of tapioca into Turkey—Seller complying with buyer's request not to load tapioca—Seller claiming cancellation expenses from buyer—Whether damages confined to difference between contract price and market price—Whether claim for cancellation expenses excluded by contract—GAFTA form 100, cl 28(c). **Bem Dis A Turk Ticaret S/A TR v International Agri Trade Co Ltd** [1999] 1 Comm 619, CA.

#### Third party—

Claim for damages in respect of liability owed to third party through inability to fulfil onward contract—Whether claim for damages could be made prior to discharging liability to third party. **Total Liban SA v Vitol Energy SA** [1999] 2 Comm 65, QBD.

#### Wrongful dismissal—

Industrial tribunal upholding plaintiff's claim for unfair dismissal and awarding compensation—Plaintiff subsequently bringing proceedings in county court for damages for wrongful dismissal for psychological injury suffered because of manner in which dismissal carried out—Whether damages recoverable. **Johnson v Unisys Ltd** [1999] 1 854, CA.

### Dispute resolution—

#### Provision for negotiations—

Defendant agreeing to supply services to plaintiff—Agreement providing for mechanism in event of dispute—Plaintiff claiming that defendant had repudiated agreement and commencing proceedings—Defendant purporting to initiate contractual mechanism for dealing with disputes and subsequently applying for stay of proceedings—Whether implementation of contractual mechanism a condition precedent for bringing proceedings—Whether proceedings should be stayed. **Halifax Financial Services Ltd v Intuitive Systems Ltd** [1999] 1 Comm 303, QBD.

### Duress—

#### Economic duress—

Commercial pressure—Defendant owning vehicles held by plaintiff on hire-purchase and lease agreements—Agreements entitling defendant to terminate agreements and recover possession of vehicles if plaintiff went into administrative receivership—Plaintiff going into administrative receivership and defendant terminating agreements—Receivers offering to pay remaining sums due under agreements—Defendant threatening to repossess vehicles unless higher sum paid—Receivers paying higher sum under protest—Whether plaintiff's right to claim relief from forfeiture rendered defendant's threat illegitimate. **Alf Vaughan & Co Ltd (in administrative receivership) v Royscot Trust plc** [1999] 1 Comm 856, Ch D.

Economic duress. *See* Duress—Economic duress, *ante*.

### Employment—

Generally. *See* Employment (Contract of service).

### Enforceability—

#### Certainty of terms—

Negotiations taking place on a particular day for sale of tanker—Offer to buy made based on main terms but subject to agreement of further terms and conditions—Recap sent at end of day recording main terms agreed, but parties intending that negotiations would continue until all further terms and conditions had been agreed—Whether negotiations resulted in final agreement capable of giving rise to a binding contract. **Manatee Towing Co v Oceanbulk Maritime SA, Oceanbulk Maritime SA v Manatee Towing Co, Manatee Towing Co v McQuilling Brokerage Partners Inc** [1999] 2 Comm 306, QBD.

### Evidence—

#### Expert witness—

North Sea oil exploration agreement—Agreement providing for equity redetermination of licensee's shares in proceeds and of reference to expert of matters in dispute—Appropriate computer program to be used by expert—Matters in dispute referred to expert—Whether expert had committed a material breach of instructions. **Shell UK Ltd v Enterprise Oil plc** [1999] 2 Comm 87, Ch D.

### Exception clause—

Carriage of goods. *See* Carriers (Contract—Carriage of goods—Conditions—Exception clause).

### Exclusion clause—

Credit insurance. *See* Insurance (Credit insurance—Exclusion clause).

Limitation of liability. *See* Limitation of liability—Exclusion clause, *post*.

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### Finance lease—

#### Relief from forfeiture—

Plaintiffs' leasing equipment from defendants—Defendants having right to terminate leases if plaintiffs went into receivership—Plaintiffs going into receivership and defendants terminating leases—Plaintiffs selling leased equipment and applying for relief from forfeiture—Whether court having jurisdiction to grant relief. **On Demand Information plc (in administrative receivership) v Michael Gerson (Finance) plc** [1999] 2 811, [1999] 1 Comm 513, Ch D.

### Illegality—

#### Duty of court—

Contract drafted by claimant and defendant to deceive finance company—Defendant not pleading illegality but judge taking point and dismissing action—Whether judge correct not to enforce contract on ground of illegality. **Birkett v Acorn Business Machines Ltd** [1999] 2 Comm 429, CA.

#### Enforceability of contract—

Contract with firm of solicitors for payment of share of fees in consideration for introduction of clients—Plaintiff suing for breach of alleged fee-sharing agreement with solicitors—Plaintiff ignorant of rule prohibiting solicitors from entering into fee sharing agreements and making alternative claim for payment for services rendered—Whether alleged agreement enforceable—Whether alternative claim in restitution available—Solicitors' Practice Rules 1990, r 7. **Mohamed v Alaga & Co (a firm)** [1999] 3 699, CA.

### Implied term—

#### Contract of service—

Generally. *See* **Employment** (Contract of service—Implied term).

#### Duty to co-operate—

Plaintiff agreeing to sell oil to defendant over five-year period—Defendant wanting confirmation that oil could be delivered without restriction to unnamed destinations in Far East and Asia—Plaintiff subsequently discovering that it could not obtain oil unless defendant identified destinations in advance—Defendant failing to identify ports—Whether defendant having implied obligation to identify destinations—Whether damages should be assessed on basis of a lost chance. **North Sea Energy Holdings NV (formerly Midland and Scottish Holdings NV) v Petroleum Authority of Thailand** [1999] 1 Comm 173, CA.

#### Duty to negotiate—

Responsibilities of Society of Lloyd's—Names accepting settlement offer from Lloyd's—Settlement agreement providing for payment of sums clear of any set-off or counterclaim—Names failing to pay sums due under settlement agreement—Lloyd's agreeing to pay outstanding sums subject to names entering into another agreement by specified date—Lloyd's withdrawing offer before specified date and serving statutory demands for the sums due—Names seeking to have statutory demands set aside—Whether Lloyd's having implied contractual obligation to negotiate until specified date—Whether court should take account of contractual provision requiring payment clear of counterclaim—Whether there was an arguable dispute over the debt—Insolvency Rules 1986, r 6.5(4). **Re Debtors (Nos 4449 and 4450 of 1998)** [1999] 1 Comm 149, Ch D.

#### Implication necessary to give business efficacy to contract—

Defendant wishing to acquire rights in product owned by claimant—Heads of agreement providing for defendant to make payments to claimant on fulfilment of certain conditions—Agreement leaving it in defendant's discretion to decide whether conditions satisfied—Judge concluding that defendants satisfied that conditions had been fulfilled—Whether defendant could be liable without communicating such satisfaction to claimant. **Stabilad Ltd v Stephens & Carter Ltd (No 2)** [1999] 2 Comm 651, CA.

#### Sale of goods—

Merchantable quality. *See* **Sale of goods** (Implied condition as to merchantable quality).

### Indemnity—

#### Generally. *See* **Indemnity**.

### Insurance—

#### Generally. *See* **Insurance** (Contract of insurance).

#### Marine insurance. *See* **Marine insurance**.

### Limitation of liability—

#### Exclusion clause—

Clause providing that parties would not bear any liability for loss of production, profits, business or any other indirect losses or consequential damages—Whether clause excluded liability for all such losses. **BHP Petroleum Ltd v British Steel plc** [1999] 2 Comm 544, QBD.

#### Marine insurance. *See* **Marine insurance**.

### Misrepresentation—

#### Indemnity. *See* **Indemnity** (Misrepresentation).

#### Reinsurance. *See* **Insurance** (Reinsurance—Misrepresentation).

### Mistake—

#### Restitution. *See* **Restitution**—Mistake, *post*.

### Offer and acceptance—

#### Acceptance—

Customer wishing to buy car by means of conditional sale agreement—Plaintiff finance house approving transaction in principle and sending cheque to dealer and authorising it to release car—Customer signing agreement and dealer releasing car—Customer selling car before agreement signed by plaintiff—Defendant purchasing car and being sued by plaintiff—Whether conditional sale agreement concluded by delivery of car—Consumer Credit Act 1974, s 61. **Carlyle Finance Ltd v Pallas Industrial Finance (Burgess (t/a John Burgess Car Sales), third party) (Wise (t/a HRG Car Sales), fourth party)** [1999] 1 Comm 659, CA.

#### Performance bond. *See* **Bond**—Performance bond, *ante*.

### Restitution—

#### Mistake—

Payment made under mistake of law—Defendant's rent demands overstating amounts due from plaintiff—Plaintiff paying sums demanded—Plaintiff discovering overpayments—Plaintiff's solicitors advising that future overpayments recoverable in legal proceedings—Plaintiff making further overpayment in reliance on advice—Whether further overpayment recoverable under mistake of law. **Nurdin & Peacock plc v D B Ramsden & Co Ltd** [1999] 1 941, Ch D.

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### Sale of goods—

Damages for breach of contract. *See* Damages for breach—Sale of goods, *ante*.  
Generally. *See* **Sale of goods**.

### Service—

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### Swap agreement—

Termination of contract. *See* Termination—Swap agreement, *post*.

### Termination—

#### Non-deliverable forward foreign exchange contracts—

Parties entering into three non-deliverable forward foreign exchange contracts involving Russian currency—Contracts providing for early termination in event of certain changes in Russia and for calculation of resulting 'Loss'—Definition of 'Loss' including any loss or cost incurred as result of terminating or liquidating any hedge—Contracts determining 'Payment Date' by reference to service of notice setting out loss calculations and providing for interest at 'Default Rate' from 'Payment Date'—Defendant entering hedging contracts with affiliate Russian bank to protect against losses on contracts with claimant—Banking moratorium preventing Russian bank from performing obligations under hedging contracts—Defendant terminating contracts with claimant and including losses on hedging contracts in assessing 'Loss'—Whether defendant entitled to take into account losses incurred on hedging contracts—Whether claimant entitled to interest at 'Default Rate'—ISDA Master Agreement (Multicurrency—Cross Border) (1992 edn), sections 6(d)(e), 14. **Australia and New Zealand Banking Group Ltd v Société Générale** [1999] 2 Comm 625, QBD.

#### Swap agreement—

Whether bank had given effective notice terminating agreement—International Swap Dealers Association Inc Master Agreement (1987 edn), sections 5, 6. **Nuova Safim SpA v Sakura Bank Ltd** [1999] 2 Comm 529, CA.

### Time charterparty. *See* **Shipping** (Time charterparty).

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European Community. *See* **European Community** (Copyright).

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#### Directions to jury—

Misdirection—Role of High Court on application for judicial review—Extent of coroner's discretion not to leave possible verdict to jury—Whether desirable in interests of justice to quash verdict. **R v Inner South London Coroner, ex p Douglas-Williams** [1999] 1 344, CA.

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Corrupt practice. *See* **Elections** (Corrupt practice).

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#### Civil litigation—

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### Bill of costs—

Taxation. *See* Taxation—Bill of costs, *post*.

### Committal—

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### Contempt of court—

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### Copyright Tribunal—

Costs of application to Copyright Tribunal to settle terms of payment for statutory licence—

Appellant requiring respondent's licence to broadcast recordings—Appellant invoking statutory licensing procedure, but parties unable to agree on terms of payment—Copyright Tribunal settling terms which fell between both sides' proposals, but concluding that appellant was winner—Tribunal awarding appellant its costs on basis that costs should follow event—Whether tribunal had erred in principle—Copyright, Designs and Patents Act 1988, s 135D—Copyright Tribunal Rules 1989, r 48(1). **Phonographic Performance Ltd v AEI Rediffusion Music Ltd** [1999] 2 299, CA.

### Costs reserved—

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### Counsel—

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### Criminal cases—

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### Legal aid—

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### Criminal cases—

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### Order for costs—

#### Costs of appeal—

Pensions Ombudsman—Liability of ombudsman for costs of successful appeal against his determination—Ombudsman appearing on appeal against his determination—Court allowing appeal—Appellant seeking order that ombudsman pay costs of appeal—Whether ombudsman's liability should be limited to costs incurred because of his appearance. **University of Nottingham v Eyett (No 2)** [1999] 2 445, Ch D.

#### Discretion—

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#### Payment of costs by non-party—

Non-party outside the jurisdiction—Underwriters successfully defending proceedings in England and seeking to recover costs from non-party domiciled in Greece—Whether court had jurisdiction to make order—Supreme Court Act 1981, s 51—Civil Jurisdiction and Judgments Act 1982, Sch 1, arts 2, 6. **National Justice Compania Naviera SA v Prudential Assurance Company Ltd, The Ikarian Reefer** [1999] 2 Comm 673, CA.

### Payment into court—

#### Plaintiff's costs of action—

Payment in by one co-defendant—Plaintiffs incurring costs in proceedings against other co-defendants—Plaintiffs discontinuing action against other co-defendants on terms that plaintiffs paid their costs—Remaining defendant subsequently making payment into court—Plaintiffs accepting payment in made by remaining defendant—Plaintiffs seeking order that remaining defendant pay costs of proceedings against all defendants as well as discontinuance costs—Whether court having jurisdiction to make order sought. **Kamenou (t/a Regency Developments) v Pariser** [1999] 2 764, QBD.

### Pensions Ombudsman—

#### Costs of appeal—

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### Summary assessment of costs—

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Summary assessment in short interlocutory hearings in High Court and county court other than family proceedings—Practice—Information to be provided by party seeking order—RSC Ord 62, r 7(4)(b)—CCR Ord 38, rr 3(3D), 19(3). **Practice Note** [1999] 1 670, QBD and Ch D.

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#### Review of taxation—

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Jurisdiction—Litigant in person—Disqualification proceedings in respect of company directors—Official Receiver acting without solicitor for part of proceedings—Taxing master disallowing costs for work done by Official Receiver—Whether Official Receiver a 'litigant in person'—Whether allowance for costs could be made to Official Receiver—Litigants in Person (Costs and Expenses) Act 1975, s 1(1)—RSC Ord 62, r 18. **Re Minotaur Data Systems Ltd, Official Receiver v Brunt** [1999] 3 122, CA.



## **COSTS (cont)**

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Offence triable summarily or on indictment—

Committal for sentence. *See* **Magistrates** (Committal for sentence—Offence triable summarily or on indictment).

Prisons. *See* **Prison**.

Prosecution—

Evidence—

Generally. *See* **Criminal evidence** (Prosecution evidence).

Remand in custody. *See* Committal—Remand in custody, *ante*.

Restraint order—

Generally. *See* **Sentence** (Restraint order).

Sentence—

Committal for sentence—

Generally. *See* **Magistrates** (Committal for sentence).

Generally. *See* **Sentence**.

Harassment. *See* Harassment—Sentence, *ante*.

Variation of sentence—

Jurisdiction—Divisional Court. *See* **Divisional Court** (Jurisdiction—Variation of sentence).

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Interception of telephone calls—

Use of telephone intercepts as evidence in criminal proceedings. *See* **Criminal evidence** (Interception of communications—Telephone intercepts).

Trespassory assembly—

Requirements—

Order in force prohibiting assembly of 20 or more persons—Appellants taking part in peaceful and non-obstructive assembly of more than 20 persons on public highway—Assembly peaceful and not obstructing highway—Area of assembly subject to order prohibiting trespassory assemblies—Whether peaceful and non-obstructive assembly on public highway a trespass—Whether public's right of access to highway exceeded—Public Order Act 1986, ss 14A, 14B. **DPP v Jones** [1999] 2 257, HL.

Trial—

Open court—

Proceedings to be held in open court—Application by defendants in criminal proceedings to stay proceedings on ground of abuse of process—Application by defendants that that application be heard in camera—Correct procedure—Whether application 'part of a trial'—Crown Court Rules 1982, r 24A. **Ex p Guardian Newspapers Ltd** [1999] 1 65, CA.

## CROSS-CLAIM

Set-off. *See* **Set-off** (Cross-claim).

## CROWN COURT

Practice—

Wales—

Use of Welsh language—Responsibility of legal representatives to inform court that Welsh language may be used—Plea and directions hearings—Listing—Interpreters—Jurors—Witnesses—Opening and closing of court. **Practice Direction** [1999] 1 575, SC.

Supervisory jurisdiction of High Court—

High Court having no supervisory jurisdiction in matters relating to trial on indictment—

DPP consenting to prosecution of defendants under provision of anti-terrorist legislation—Crown Court judge ruling that provision contrary to European Convention for Protection of Human Rights—DPP receiving legal advice to contrary and deciding to continue with prosecution—Defendants applying for judicial review of DPP's decision—Whether High Court having jurisdiction to entertain challenge to DPP's decision to consent to prosecution—Supreme Court Act 1981, s 29(3)—Prevention of Terrorism (Temporary Provisions) Act 1989, s 16A. **R v DPP, ex p Kebeline, R v Director of Public Prosecutions, ex p Rechachi** [1999] 4 801, HL.

Plea of not guilty by reason of insanity—Judge purporting to make supervision and treatment order without first empanelling jury—Whether judge entitled to do so—Whether High Court having jurisdiction to entertain challenge to order—Criminal Procedure (Insanity) Act 1964, s 5—Supreme Court Act 1981, s 29(3). **R v Crown Court at Maidstone, ex p Harrow London BC** [1999] 3 542, QBD.

Trial on indictment—

High Court having no supervisory jurisdiction in matters relating to trial on indictment—Crown Court sentencing minor and lifting reporting restrictions—Whether decision a 'matter relating to trial on indictment'—Children and Young Persons Act 1933, s 39—Supreme Court Act 1981, s 29(3). **R v Crown Court at Winchester, ex p B (a minor)** [1999] 4 53, QBD.

## CUSTODIAL SENTENCE

Generally. *See* **Sentence**.

## CUSTODY

Remand in custody. *See* **Criminal law** (Committal—Remand in custody).

## DAMAGES

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Generally. *See* **Contract** (Damages for breach).

Expenses of third party—

Services provided to plaintiff by third party—

Defendant damaging plaintiff's car in accident—Plaintiff hiring replacement car from third party—Third party's failure to comply with statutory requirements rendering agreement unenforceable against plaintiff—Whether plaintiff could recover hire charges as damages from defendant. **Dimond v Lovell** [1999] 3 1, CA.

False imprisonment—

Generally. *See* **False imprisonment** (Damages).

Fatal accident. *See* **Fatal accident** (Damages).

Fraud—

Mitigation of loss. *See* Mitigation of loss—Fraud, *post*.

Interest—

Generally. *See* **Interest** (Damages).

Landlord and tenant—

Unlawful eviction of tenant. *See* **Landlord and tenant** (Eviction—Unlawful eviction of tenant—Damages).

Measure of damages—

Breach of contract. *See* **Contract** (Damages for breach—Measure of damages).

Negligence—

Surveyor—Surveyor negligently valuing property for mortgagee and private purchaser—Property uninhabitable—Whether purchaser entitled to recover equivalent of indemnity for past and future mortgage interest payments and insurance premiums—Whether purchaser entitled to recover cost of alternative accommodation until resale of property—Powers of court on making award of damages. **Patel v Hooper & Jackson (a firm)** [1999] 1 992, CA.

Valuer—Valuer negligently valuing property for loan made by plaintiff—Property substantially overvalued—Plaintiff lender obtaining possession of property and selling at loss—Plaintiff applying imprudent lending policy—Loan of 70% of value of security—Lending policy failing to take account of borrower's ability to service mortgage—Whether plaintiff contributorily negligent—Extent to which damages to be reduced on account of plaintiff's imprudent lending decision—Law Reform (Contributory Negligence) Act 1945, s 1. **Platform Home Loans Ltd v Oyston Shipways Ltd** [1999] 1 833, HL.

Mitigation of loss—

Fraud—

Falsely dated bill of lading inducing plaintiff to pay for consignment of bitumen—Plaintiff selling bitumen at a loss and suing defendants for deceit and conspiracy—Defendants contending that plaintiff had failed to mitigate its loss—Whether test for mitigation in fraud cases differed from normal test. **Standard Chartered Bank v Pakistan National Shipping Corp** [1999] 1 Comm 417, QBD.

Negligence—

Measure of damages. *See* Measure of damages—Negligence, *ante*.

Personal injury—

Interest on damages. *See* **Interest** (Damages—Personal injury).

Services rendered to plaintiff—

Gratuitous services by plaintiff's wife for his business—Plaintiff suffering injuries in road traffic accident—Plaintiff's wife performing gratuitous services for his business because of accident—Whether plaintiff could recover damages for wife's gratuitous services. **Hardwick v Hudson** [1999] 3 426, CA.



## **DAMAGES (cont)**

Special damages—

Interest—

Personal injury cases. *See* **Interest** (Damages—Personal injury—Special damages).

Unwanted pregnancy—

Negligence—

Husband having vasectomy—Doctor advising husband that he could dispense with use of contraceptives—Wife becoming pregnant and giving birth to healthy child—Whether damages recoverable for pain and distress suffered during unwanted pregnancy—Whether damages recoverable for cost of rearing healthy child. **McFarlane v Tayside Health Board** [1999] 4 961, HL.

Wrongful dismissal—

Generally. *See* **Contract** (Damages for breach—Wrongful dismissal).

## **DANGEROUS DRUGS**

Generally. *See* **Drugs** (Dangerous drugs).

## **DEATH**

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Fatal Accidents Acts. *See* **Fatal accident** (Damages).

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## **DEBT**

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Statutory demand. *See* **Insolvency** (Statutory demand—Debt).

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Alteration not approved by all parties to deed—

Defendant executing guarantee—Parties leaving service agent clause blank—Bank filling in clause without defendant's knowledge—Whether alteration material so as to render guarantee unenforceable. **Raiffeisen Zentralbank Österreich AG v Crossseas Shipping Ltd** [1999] 1 Comm 626, QBD.

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## **DEFAULT JUDGMENT**

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## **DEFENCE**

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## **DIRECTION TO JURY**

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## **DISABILITY**

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Employment. *See* **Employment** (Disability—Discrimination).

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## **DISCOVERY**

Collateral use of information obtained—

Implied undertaking not to use disclosed documents for collateral or ulterior purpose—

Different proceedings—Documents produced in a taxation—Whether implied obligation arising—Whether documents produced in a taxation could be used in different proceedings in English court or in foreign proceedings. **Bourns Inc v Raychem Corp** [1999] 3 154, CA.

## DISCOVERY (cont)

### Collateral use of information obtained (cont)—

Undertaking not to use disclosed documents for collateral or ulterior purpose—

Parties providing judge with pre-trial reading guide in action to revoke patent—Material in guide including or referring to documents disclosed by patent holder on discovery—Patent holder offering to surrender patent on day before trial—Judge stating that he had read material and revoking patent at short hearing in open court—Whether documents remaining subject to implied undertaking not to use for any purposes outside proceedings—RSC Ord 24, r 14A. **SmithKline Beecham Biologicals SA v Connaught Laboratories Inc** [1999] 4 498, Ch D.

### Discovery against persons not parties to proceedings—

Employee applying for non-party discovery from insurer of documents to assist in claim against director of company employer—

Employee's claim against employer being in respect of economic loss based on failure to maintain insurance policies—Whether claim for personal injuries—Whether documents relevant to issue likely to arise—Supreme Court Act 1981, s 34(2). **Burns v Shuttlehurst Ltd** [1999] 2 27, CA.

### Interlocutory motion—

#### Jurisdiction—

Passing off—Defendants setting up company in competition with claimants after leaving their employment—Claimants alleging that defendants had made misrepresentations to customers and bringing proceedings against them for passing off—Claimants seeking interim order that employees disclose names and addresses of business contacts—Whether court had jurisdiction to make such an order. **Intelsec Systems Ltd v Grech-Cini** [1999] 4 11, Ch D.

### Legal professional privilege—

Communications between legal adviser and client—

Documents containing communications between police and Director of Public Prosecutions—Communications concerning evidence in murder investigation—Whether documents attracting legal professional privilege. **Goodridge v Chief Constable of Hampshire Constabulary** [1999] 1 896, QBD.

Criminal or fraudulent conduct undertaken for purposes of litigation—

Plaintiff employing agent to investigate defendant's finances—Defendant contending that agents had acted illegally—Defendant seeking discovery of documents relating to investigation—Whether plaintiff entitled to claim legal professional privilege in relation to those documents. **Dubai Aluminium Co Ltd v Al Alawi** [1999] 1 Comm 1, QBD.

Legal advice obtained in furtherance of crime or fraud—

Loss of privilege—Criminal or fraudulent conduct undertaken for purposes of litigation—Plaintiff employing agents to investigate defendant's finances—Defendant contending that agents had acted illegally—Defendant seeking discovery of documents relating to investigation—Whether plaintiff entitled to claim legal professional privilege in relation to those documents. **Dubai Aluminium Co Ltd v Al Alawi** [1999] 1 703, QBD.

### Privilege—

#### Confidential documents—

Documents obtained for purposes of legal proceedings—Documents produced for purposes of a taxation—Documents produced including scientist's report supplied to expert witness but not being referred to in evidence—Whether waiver of privilege attaching to scientist's report limited to production for purposes of taxation. **Bourns Inc v Raychem Corp** [1999] 3 154, CA.

Legal professional privilege. *See* Legal professional privilege, *ante*.

#### Production contrary to public interest—

Documents containing communications between police and Director of Public Prosecutions—Communications concerning evidence in murder investigation—Public interest immunity attaching to documents as a class—Plaintiff seeking order for production for inspection of documents—Whether production necessary for disposing fairly of the action or for saving costs—Whether plaintiff satisfying threshold test—Whether court should inspect documents for itself to carry out balancing exercise between conflicting interests. **Goodridge v Chief Constable of Hampshire Constabulary** [1999] 1 896, QBD.

### Production of documents—

#### Inspection—

Risk of prosecution from disclosure—Financial institution ordered to produce documents which could reveal money laundering—Production of documents likely to prejudice investigation by National Criminal Intelligence Services exposing institution to risk of prosecution for tipping-off—Guidelines on procedure to be adopted—Criminal Justice Act 1988, s 93D. **C v S** [1999] 2 343, CA.

#### Order for production for inspection—

Documents containing communications between police and Director of Public Prosecutions—Plaintiff seeking order for production for inspection of documents—Whether production necessary for disposing fairly of the action or for saving costs—Whether plaintiff satisfying threshold test—Whether court should inspect documents for itself when considering application—RSC Ord 24, r 13. **Goodridge v Chief Constable of Hampshire Constabulary** [1999] 1 896, QBD.

#### Privilege—

Generally. *See* Privilege, *ante*.

#### Production before commencement of proceedings—

Insurers refusing to indemnify employer in respect of employee's claim for damages for personal injuries—Employee obtaining judgment for damages to be assessed—Employee contemplating action against insurer and applying for pre-action discovery of documents relating to claim from insurer—Whether discovery should be ordered—Whether contemplated action 'claim in respect of personal injuries'—Whether claim 'likely to be made'—Supreme Court Act 1981, s 33(2). **Burns v Shuttlehurst Ltd** [1999] 2 27, CA.

## DISCRIMINATION

### Employment—

Disability discrimination. *See* **Employment** (Disability—Discrimination).

Equality of treatment. *See* **Employment** (Equality of treatment of men and women).

### Men and women—

#### Employment—

Discrimination against a woman. *See* **Employment** (Discrimination against a woman).

### Racial—

Generally. *See* **Race relations**.

## DISCRIMINATION (cont)

Taxation—

European Community. *See* **European Community** (Taxation—Discrimination).

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Employment—

Redundancy. *See* **Redundancy** (Dismissal by reason of redundancy).

Unfair dismissal. *See* **Unfair dismissal**.

Wrongful dismissal—

Damages for breach of contract. *See* **Contract** (Damages for breach—Wrongful dismissal).

## DISPUTE RESOLUTION

Contract. *See* **Contract** (Dispute resolution).

## DISQUALIFICATION

Company director. *See* **Company** (Director—Disqualification).

## DIVIDING WALL

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## DIVISIONAL COURT

Jurisdiction—

Variation of sentence—

Justices committing applicants into custody for non-payment of fines—Justices agreeing orders should be quashed because of deficiencies in committal warrants—Applicants seeking consent orders quashing sentences imposed and substituting term of custody in fact served for term of custody ordered to be served—Whether Divisional Court having jurisdiction to make consent orders sought—Whether orders 'made on ... conviction'—Supreme Court Act 1981, s 43. **R v St Helens Justices, ex p Jones** [1999] 2 73, QBD.

## DIVORCE

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Compromise—

Negotiations between parties leading to number of draft agreements—Husband claiming no agreement—Judge determining parties bound by draft agreement—Whether judge correct—Whether matter to be determined by ordinary contractual principles—Matrimonial Causes Act 1973, s 25. **Xydhias v Xydhias** [1999] 2 386, CA.

Appeal—

Financial provision—

Discretion—Whether judge dividing assets correctly—Factors to be considered by appellate court when evaluating exercise of discretion by first instance judge—Matrimonial Causes Act 1973, ss 24, 25. **Pigłowska v Pigłowski** [1999] 3 632, HL.

Financial provision—

Appeal. *See* Appeal—Financial provision, *ante*.

Avoidance of transaction intended to prevent or reduce financial relief—

Notice terminating joint secure tenancy—Whether notice a disposition of property—Matrimonial Causes Act 1973, s 37. **Bater v Bater, Greenwich London BC v Bater** [1999] 4 944, CA.

## DOCTOR

Generally. *See* **Medical practitioner**.

## DOCUMENT

Deed. *See* **Deed**.

Discovery of documents. *See* **Discovery**.

## DOCUMENTARY CREDIT

*See* **Bank** (Documentary credit).

## DOUBLE PORTIONS

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## DRUGS

Dangerous drugs—

Occupier of premises permitting activities in connection with drugs to take place there—

Licensee of public house charged with permitting premises to be used for supply of controlled drugs—

Whether necessary for prosecution to prove knowledge of identity and class of drug—Misuse of Drugs Act 1971, s 8(b). **R v Bett** [1999] 1 600, CA.

Drug trafficking—

Restraint order—

Appointment of receiver—Whether receiver having power to sell all assets of unconvicted defendant prior to trial—Whether court should interfere with the exercise of the receiver's powers—Whether restraint order conferring on receiver a general power of sale—Drug Trafficking Act 1994, s 31(2). **Piper** [1999] 4 473, CA.

## DURESS

Contract. *See* **Contract** (Duress).

## DUTY OF CARE

Negligence—

Generally. *See* **Negligence** (Duty to take care).

Police. *See* **Police** (Negligence—Duty to take care).

## DUTY OF CARE (cont)

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Solicitor—

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## ECCLIASTICAL LAW

Exhumation and reinterment of human remains—

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Faculty—

Jurisdiction—

Faculty for exhumation and reinterment of human remains—Principles to be applied in exercising jurisdiction. *Re* **Christ Church, Alsager** [1999] 1 117, Chancery Ct.

## ECONOMIC DURESS

Contract. *See* **Contract** (Duress—Economic duress).

## EDUCATION

Educational psychologist—

Negligence—

Duty of care. *See* **Negligence** (Duty to take care—Existence of duty—Educational psychologist).

Special educational needs—

Educational provision—

Statement of special educational needs classifying child's needs for physiotherapy, occupational therapy and speech therapy as non-educational provision—Whether such needs could be educational provision—Education Act 1996, Pt IV. **Bromley London BC v Special Educational Needs Tribunal** [1999] 3 587, CA.

## ELECTIONS

Corrupt practice—

Parliamentary election—

MP being found guilty of corrupt practice during election campaign and her seat vacated in consequence—Court of Appeal quashing conviction before seat filled—Whether MP entitled to resume seat—Representation of the People Act 1983, s 160(4). **A-G v Jones** [1999] 3 436, QBD.

## EMPLOYMENT

Act within course of employment—

Scope of employment—

Vicarious liability. *See* **Vicarious liability** (Master and servant—Act within course of employment).

Continuity—

Transfer of trade, business or undertaking—

Transferee taking over contract to deliver vehicles from transferor—Transferee not employing former employees of transferor because they were bringing proceedings—Tribunal holding there had been transfer of undertaking despite non-employment of transferor's employees—Whether tribunal entitled so to hold—Whether tribunal entitled to take into account transferee's reason for not employing transferor's employees—Transfer of Undertakings (Protection of Employment) Regulations 1981. **ECM (Vehicle Delivery Service) Ltd v Cox** [1999] 4 669, CA.

Contract of service—

Breach of contract—

Non-payment of wages or interference with salary package—Whether fundamental to continued existence of contract of employment—Whether amounting to repudiatory breach. **Cantor Fitzgerald International v Callaghan** [1999] 2 411, CA.

Implied term—

Implied term in contract of employment that employer would not conduct itself in manner likely to damage relationship of trust and confidence between employer and employee—Employee asking employer to inform him of pension entitlement if he retired on certain date—Employer providing required information but failing to say that entitlement would be higher if employee retired one month later—Employee complaining to pensions ombudsman about employer's failure to alert him to consequences of retirement on later date—Whether employer in breach of implied duty of trust and confidence. **University of Nottingham v Eyett (No 1)** [1999] 2 437, Ch D.

Whether implied term of trust and confidence required employer to disclose its own breaches of employment contract to employees. **Bank of Credit and Commerce International SA (in liquidation) v Ali** [1999] 2 1005, Ch D.

Implied term of trust and confidence—

Bank concealing insolvency through systematic fraud—Bank collapsing and employees being made redundant—Bank's fraudulent activities being widely publicised and employees claiming damages for stigma in labour market—Whether bank's conduct breaching trust and confidence term in contracts of all employees—Whether breach of implied term causing financial loss to employees. **Bank of Credit and Commerce International SA (in liq) v Ali (No 2)** [1999] 4 93, Ch D.

Written particulars of employment—

Appellant's predecessor making written offer of employment to respondents on 'casual as required basis'—Respondents giving written acceptance of offer and working on invitation when available and choosing to work—Respondents claiming to be entitled to written particulars of terms of employment as employees under contracts of employment—Tribunal inferring from documents, surrounding circumstances and parties' conduct that no contractual relationship existed when respondents not working—Whether tribunal entitled to do so—Whether issue to be determined solely by reference to documents. **Carmichael v National Power plc** [1999] 4 897, HL.

Disability—

Discrimination—

Employee dismissed from employment following injury—Employee making complaint of unlawful disability discrimination—Whether tribunal correctly approaching identity of comparator—Whether employee's treatment justified—Disability Discrimination Act 1995, ss 5, 6. **Clark v TDG Ltd (t/a Novacold)** [1999] 2 977, CA.



## EMPLOYMENT (cont)

### Discrimination—

Disability discrimination. *See* Disability—Discrimination, *ante*.

### Discrimination against a woman—

Generally. *See* Discrimination against a woman, *post*.

### Discrimination against a woman—

#### Jurisdiction—

Tribunal dismissing sex discrimination claim because employee did not ordinarily work in Great Britain—Whether tribunal had applied correct test—Sex Discrimination Act 1975, s 10(1). **Carver (née Mascarenhas) v Saudi Arabian Airlines** [1999] 3 61, CA.

### Dismissal—

Redundancy. *See* **Redundancy** (Dismissal by reason of redundancy).

#### Unfair dismissal—

Generally. *See* **Unfair dismissal**.

#### Wrongful dismissal—

Damages for breach of contract. *See* **Contract** (Damages for breach—Wrongful dismissal).

### Equality of treatment of men and women—

Discrimination against a woman. *See* Discrimination against a woman, *ante*.

#### Equal pay for equal work—

European Community. *See* **European Community** (Equality of treatment of men and women—Equal pay for equal work).

Redundancy benefits—Severance payment—Employee with 11 years' full-time service returning after maternity leave to part-time employment and thereafter taking voluntary redundancy on basis of severance scheme contained in contract of employment—Severance payment assessed on number of years service and salary at date of termination of employment—Whether discriminatory—Whether method of calculation of severance payment constituting breach of employee's right to equal pay for equal work—Equal Pay Act 1970, s 1—EC Treaty, art 119. **Barry v Midland Bank plc** [1999] 3 974, HL.

#### European Community—

Generally. *See* **European Community** (Equality of treatment of men and women).

European Community. *See* **European Community** (Employment).

Health and safety at work. *See* **Health and safety at work**.

### Pay—

Equality of treatment of men and women. *See* Equality of treatment of men and women, *ante*.

### Redundancy—

Generally. *See* **Redundancy**.

### Safety of employees—

Duty of employer under Health and Safety at Work etc Act. *See* **Health and safety at work**.

### Time charterparty—

Employment clause. *See* **Shipping** (Time charterparty—Employment clause).

### Transfer of trade, business or undertaking—

Continuity. *See* Continuity, *ante*.

### Vicarious liability—

Generally. *See* **Vicarious liability** (Master and servant).

### Wrongful dismissal—

#### Damages—

Generally. *See* **Contract** (Damages for breach—Wrongful dismissal).

## ENDURING POWER OF ATTORNEY

*See* **Power of attorney** (Enduring power of attorney).

## ENFORCEMENT NOTICE

Town and country planning. *See* **Town and country planning** (Enforcement notice).

## ENGINEER

### Building contract—

#### Engineer's decision—

Arbitration. *See* **Building contract** (Engineer—Engineer's decision—Arbitration).

## ENVIRONMENT

### Access to information—

European Community. *See* **European Community** (Access to information—Information relating to the environment).

### Environmental impact assessment—

Development consent. *See* **Town and country planning** (Development consent—Environmental impact assessment).

## EQUAL PAY

### Men and women—

#### European Community—

Generally. *See* **European Community** (Equality of treatment of men and women—Equal pay for equal work).

Generally. *See* **Employment** (Equality of treatment of men and women).

## EQUITY

Trust and trustee. *See* **Trust and trustee**.

### Undue influence—

#### Constructive notice—

Husband and wife each having one share in loss-making family company but wife playing little role in company—Wife executing charge to secure bank loan to company—Bank not advising wife about implications of transaction—Whether transaction manifestly disadvantageous to wife—Whether bank was on notice. **Bank of Cyprus (London) Ltd v Markou** [1999] 2 707, Ch D.

Misrepresentation by person exercising influence. *See* Undue influence—Misrepresentation by person exercising influence—Husband and wife—Constructive notice of misrepresentation, *post*.

## EQUITY (cont)

### Undue influence (cont)—

#### Misrepresentation by person exercising influence—

Husband and wife—Constructive notice of misrepresentation—Pleading of constructive notice—Bank bringing action to enforce charge over property owned jointly by husband and wife—Wife resisting claim for possession and claiming that charge should be set aside as against her on grounds of husband's misrepresentation—Whether necessary for wife to plead and prove that bank having constructive notice of alleged misrepresentation. **Barclays Bank plc v Boulter** [1999] 4 513, HL.

## EUROPEAN COMMUNITY

### Access to information—

#### Information relating to the environment—

Local authority planning road construction—Plaintiff requesting copy of statement of views of countryside protection agency relating to project—Request refused—Extent of Community protection of freedom of access to information on the environment—Council Directive (EEC) 90/313, arts 2, 3. **Mecklenburg v Kreis Pinneberg—Der Landrat (Der Vertreter des öffentlichen Interesses, Kiel intervening)** (Case C-321/96) [1999] EC 166, ECJ.

### Commission—

#### Decision—

Partial annulment by Court of Justice of decision relating to proceeding under Community competition provisions—Effect of judgment on persons to whom decision addressed but who did not bring action for annulment—EC Treaty, art 176 (now art 233(1) EC). **European Commission v AssiDomän Kraft Products AB** (Case C-310/97 P) [1999] EC 737, ECJ.

#### Failure to act—

Applicant complaining to commission that competitor engaging in anti-competitive behaviour—Commission not reaching definitive position in three years and then changing direction of investigation—Applicant submitting observations and requesting Commission to reach definitive position within reasonable time—Two months later applicant bringing proceedings for declaration of failure to act—Whether reasonable time having elapsed—Commission Regulation (EEC) 99/63, art 6—EC Treaty, art 175 (now art 232 EC). **UPS Europe SA v European Commission** (Case T-127/98) [1999] EC 794, ECJ.

#### Principle of collegiality—

Reasoned opinion—Decision to commence proceedings—Commission issuing reasoned opinion and subsequently bringing proceedings against Germany concerning implementation of directives on disclosure of companies' annual accounts—Whether procedure by which Commission's decision made breaching principle of collegiality—Conditions for complying with principle—EC Treaty, art 169. **European Commission v Germany** (Case C-191/95) [1999] EC 483, ECJ.

### Competition—

#### Rules on competition. *See* Rules on competition, *post*.

### Conflict of laws—

#### Jurisdiction—

Civil and commercial matters—Interim relief—Arbitration—German charterer failing to pay invoices for cargo space—Dutch shipping line instituting arbitration proceedings under contract and applying to Dutch court for payment of outstanding sums as interim relief—Whether jurisdiction to hear applications for provisional measures could be invoked notwithstanding arbitration agreement—Whether order for payment of contractual consideration could be provisional measure—Civil Jurisdiction and Judgments Act 1982, Sch 1, art 24. **Van Uden Maritime BV (t/a Van Uden Africa Line) v Kommanditgesellschaft in Firma Deco-Line** (Case C-391/95) [1999] EC 258, ECJ.

### Consumer protection—

#### Contracts negotiated away from business premises—

Time-share contracts—Contract for time-share apartment and related services concluded on excursion to see property—Buyer renouncing contract three days later—Which Community legislation applicable—Interpretation of applicable legislation—Council Directive (EEC) 85/577, arts 1, 3, 5—Council Directive (EC) 94/47. **Travel-Vac SL v Antelm Sanchis** (Case C-423/97) [1999] EC 656, ECJ.

#### Package travel—

Tour operator becoming insolvent—Hotelier forcing tour operator's clients to pay own accommodation before leaving—Tour operator's insurance company refusing to reimburse holidaymakers—Extent of protection against organiser's insolvency—Council Directive (EEC) 90/314, art 7. **Verein für Konsumenteninformation v Österreichische Kreditversicherungs AG** (Case C-364/96) [1999] EC 183, ECJ.

### Copyright—

#### Rental and lending rights—

Copyright holders accepting videodiscs being offered for rent in UK—Videodiscs offered for rental in Denmark without copyright holders' express consent—Copyright holders bringing action and applying for an injunction—Whether copyright holders able to prohibit films being offered for rental in one member state if rental authorised within another member state—Council Directive (EEC) 92/100. **Egmont Film A/S v Laserdisken (supported by Sammenslutningen af Danske Filminstruktører)** (Case C-61/97) [1999] EC 366, ECJ.

### Counsel—

#### European Court of Justice—

Guidance for counsel. *See* European Court of Justice—Guidance for counsel, *post*.

#### Court of Justice. *See* European Court of Justice, *post*.

### Discrimination—

#### Taxation. *See* Taxation—Discrimination, *post*.

### Employment—

#### Equality of treatment of men and women. *See* Equality of treatment of men and women, *post*.

#### Transfer of undertaking, business or part of business—

Employer in voluntary liquidation—Business transferred—Employee refusing new contract offered by transferee—Whether Community rules on protection of employees right applying where transferred undertaking in voluntary liquidation—Fate of employment contract—Council Directive (EEC) 77/187, art 4(2). **Europièces SA (in liq) v Sanders** (Case C-399/96) [1999] EC 831, ECJ.

### Environment—

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## EUROPEAN COMMUNITY (cont)

### Environment (cont)—

#### Waste—

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#### Water—

Nitrates—Competent authorities designating land owned or farmed by applicants as 'nitrate vulnerable zones'—Applicants challenging designation on grounds that consequent restrictions on agricultural activity reducing land values and farming incomes—Scope of application of Community directive—Whether directive infringing principles of polluter pays, environmental damage to be rectified at source, proportionality—Right to property—Council Directive (EEC) 91/676, arts 3(1), 5. **R v Secretary of State for the Environment, ex p Standley (National Farmers' Union intervening)** (Case C-293/97) [1999] EC 412, ECJ.

### Equality of treatment of men and women—

#### Access to employment—

Derogation from principle of equal treatment—Transfer—British Royal Marines refusing to employ woman as chef—Royal Marines requiring every marine to be capable of fighting in commando unit—Whether policy discriminating against women—Council Directive (EEC) 76/207, art 2—EC Treaty, art 224 (now art 297 EC). **Sirdar v Secretary of State for Defence (Case C-273/97)** [1999] EC 928, ECJ.

#### Equal pay for equal work—

Limitation—Remedies for discrimination—Applicant's claim for equal pay brought late because of employer's deceit—Whether application of limitation period in such circumstances compatible with Community law—Equal Pay Act 1970—Council Directive (EEC) 75/117, arts 2, 6. **Levez v T H Jennings (Harlow Pools) Ltd (Case C-326/96)** [1999] EC 1, ECJ.

#### Pay and working conditions—

Dismissal—National legislation making right to bring unfair dismissal action conditional on two years' continuous employment—Whether two-year threshold discriminatory—Whether compensation for unfair dismissal constituting 'pay'—Unfair Dismissal (Variation of Qualifying Period) Order 1985—Council Directive (EEC) 76/207—EC Treaty, art 119. **R v Secretary of State for Employment, ex p Seymour-Smith (Case C-167/97)** [1999] EC 97, ECJ.

#### Working conditions—

Pay and working conditions. *See* Equality of treatment of men and women—Pay and working conditions, *ante*.

Pregnancy—National rules—Incapacity for work caused by pregnancy-related illness outside maternity leave period—Absence from work caused by pregnancy-related inconveniences—Employer's right not to provide work for pregnant employee—Council Directive (EEC) 75/117—Council Directive (EEC) 76/207—Council Directive (EEC) 92/85—EC Treaty, art 119. **Høj Pedersen v Kvickly Skive (Case C-66/96)** [1999] EC 138, ECJ.

### European Commission. *See* Commission, *ante*.

### European Court of Justice—

#### Guidance for counsel—

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### Exports—

Freedom of movement. *See* Freedom of movement—Goods—Exports, *post*.

### Fishing rights—

#### Fishing vessels—

Registration—United Kingdom legislation restricting registration to vessels owned by qualified British citizens or companies—Registration provisions incompatible with Community law—Liability of state to pay compensation—Liability of state to pay exemplary damages. **R v Secretary of State for Transport, ex p Factortame Ltd (Note)** [1999] 2 640, CA.

Registration—United Kingdom legislation restricting registration to vessels owned by qualified British citizens or companies—Registration provisions incompatible with Community law—Liability of state to pay compensation—Merchant Shipping Act 1988. **R v Secretary of State for Transport, ex p Factortame Ltd** [1999] 4 906, HL.

### Freedom of movement—

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Exports—Quantitative restrictions and equivalent measures—Export of livestock—Police operation mounted in response to animal rights protests against export of livestock—Chief constable deciding to restrict operation to specific days—Police indicating lorries would be turned away from port whenever breach of peace foreseeable—Whether chief constable's actions amounting to unlawful restriction on exports to member states—Whether chief constable's actions justified on grounds of public policy—EC Treaty, arts 34, 36. **R v Chief Constable of Sussex, ex p International Trader's Ferry Ltd** [1999] 1 129, HL.

Post clearance recovery of customs duties—Customs authorities aware of fraud perpetrated in relation to goods bound for export—Authorities not warning customs agent involved in transaction but not implicated in fraud—Customs agent incurring liability for duties avoided by third party's fraud—Whether customs authorities obliged to warn agent—Whether agent liable—Council Regulation (EEC) 2726/90, art 11 (1)(c)—Council Regulation (EEC) 1430/79, art 13(1). **De Haan Beheer BV v Inspecteur der Invoerrechten en Accijnzen te Rotterdam (Case C-61/98)** [1999] EC 803, ECJ.

Trade mark exhaustion—Parallel imports—Trade mark owner marketing goods under different trade marks in different member states—Parallel importer replacing trade mark used in exporting member state with mark used in importing state—Whether parallel importer entitled so to act—EC Treaty, arts 30, 36 (now arts 28, 30 EC)—Council Directive (EEC) 89/104, art 7. **Pharmacia & Upjohn SA (formerly Upjohn SA) v Paranova A/S (Case C-397/97)** [1999] EC 880, ECJ.

Trade mark exhaustion—Plaintiff placing trade marked goods on market in Asia/Pacific region—Defendant importing goods into European Economic Area (EEA) without plaintiff's express consent—Defendant or its suppliers removing batch codes from products—Plaintiff bringing action for trade mark infringement—Whether trade mark proprietor's consent to marketing of goods in EEA had to be explicit—Whether removal of codes changed or impaired condition of goods—Council Directive (EEC) 89/104, art 7. **Zino Davidoff SA v A & G Imports Ltd** [1999] 3 711, Ch D.



## EUROPEAN COMMUNITY (cont)

### Freedom of movement (cont)—

#### Goods (cont)—

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#### Services—

Credit institutions—Defendants selling financial instruments which were repayable as a result of contractual provisions—Defendants charged with unlawfully taking savings from the public—Whether financial instruments at issue constituting 'repayable funds'—Council Directive (EEC) 89/646, art 3. **Criminal proceedings against Romanelli** (Case C-366/97) [1999] EC 473, ECJ.

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### Guidance for counsel—

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Written and oral proceedings before Court of First Instance. **Practice note, Notes for guidance of Counsel in written and oral proceedings before the Court of First Instance of the European Community** [1999] EC 641, CFI.

### Immigration—

#### Co-operation agreement with third country—

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### Insurance—

#### Value added tax—

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### Land—

#### Value added tax—

Exemption. *See* Value added tax—Exemptions—Land, *post*.

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Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts 1997. **Note, Treaty citation (No 2)** [1999] EC 646, ECJ.

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts 1997. **Note: Treaty Citation** [1999] EC 481, ECJ.

### Practice—

#### Reference for a preliminary ruling—

Admissibility—Whether immigration adjudicator constituting 'court or tribunal'—EC Treaty, art 177. **El-Yassini v Secretary of State for the Home Dept** (Case C-416/96) [1999] EC 193, ECJ.

### Procedure—

#### Claim for breach of rules relating to public supply contracts—

Time limit—Regulations providing for three-month time limit for bringing claims—Whether time limit in conformity with Community law—Whether claim brought within time limit—Public Services Contract Regulations 1993, reg 32(4)(b)—Council Directive (EEC) 89/665, art 2. **Matra Communication SAS v Home Office** [1999] 3 562, CA.

### Public procurement—

#### Services—

Municipal waste contracts awarded to public company without using Community tendering procedures—Private waste disposal company challenging award—Whether Community rules applicable—Meaning of 'body governed by public law'—Council Directive (EEC) 92/50, arts 1(b), 6. **Gemeente Arnhem v BFI Holding BV** (Case C-360/96) [1999] EC 709, ECJ.

Supplies—Irish forestry board set up as private company but being subject to a degree of state control—Board inviting tenders for fertiliser supply contracts without publishing invitations in Community official journal—Whether board constituting a 'contracting authority' subject to Community public procurement rules—Council Directive (EEC) 77/62, art 1(b), Annex I. **Connemara Machine Turf Co Ltd v Coillte Teoranta** (Case C-306/96) [1999] EC 62, ECJ.

### Rules on competition—

#### Abuse of dominant position—

Public undertakings and undertakings granted special or exclusive rights—Member state designating domestic undertaking as sole end-processor for incineration of dangerous waste—Whether justifiable as service of general economic interest—EC Treaty, arts 86, 90. **Chemische Afvalstoffen Dusseldorp BV v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer** (Case C-203/96) [1999] EC 25, ECJ.

#### Agreements preventing, restricting or distorting competition—

Beer supply agreements—Public house—Lease tying house to brewery—Beer tie null and void—Lease acquired by different brewery—Whether assignee of lease able to enforce beer tie—EC Treaty, art 85(1)(2). **Passmore v Morland plc** [1999] 3 1005, CA.

Licensing agreement involving a market sharing arrangement—Agreement terminated early—Licensees instituting arbitration proceedings—Licensor contending consequent awards contrary to public policy on ground that licensing agreement contrary to Community competition law—Power of national courts to apply Community rules and annul arbitration awards—EC Treaty, art 81 (ex art 85). **Eco Swiss China Time Ltd v Benetton International NV** (Case C-126/97) [1999] 2 Comm 44, ECJ.

#### Comfort letter—

Exclusive purchasing obligation—Commission decision declaring ice-cream producer's supply agreements void and prohibiting producer from entering such agreements in future—Court of First Instance annulling provision relating to future agreements but otherwise upholding decision—Producer appealing—Principle of legitimate expectations—Whether agreements preventing, restricting or distorting competition in market—Commission cross appealing—Legality of prohibition on future conclusion of exclusive agreements—EC Treaty, art 85. **Langnese-Iglo GmbH v European Commission (supported by Mars GmbH)** [1999] EC 616, ECJ.



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### Rules on competition (cont)—

#### Concerted pricing practices—

Standard bank conditions—Plaintiffs incurring debts with defendant bank—Debts calculated on basis of standard bank conditions imposed by banking association—Banking conditions not allowing banks to offer current account credit facilities with fixed interest rate and requiring such facilities to be secured by prescribed general guarantee—Whether conditions restricting competition between member states—EC Treaty, arts 85, 86. **Bagnasco v Banca Popolare di Novara soc coop arl**, (Joined cases C-215/96 and C-216/96) [1999] EC 669, ECJ.

#### Mergers—

Concentrations not having Community dimension—Netherlands government inviting Commission to investigate concentration not having Community dimension—Commission declaring concentration incompatible with common market—Undertakings concerned challenging that decision—Scope of Commission's power of investigation—Rights of the defence—Access to the file—Procedural requirements—Council Regulation (EEC) 4064/89, art 22—Commission Regulation (EC) 3384/94, art 15. **Endemol Entertainment Holding BV v European Commission (Case T-221/95)** [1999] EC 385, CFI.

South African undertaking agreeing to merge platinum metals operations with English competitor—Commission declaring proposed concentration incompatible with common market—Territorial scope of Community merger regulation—Whether regulation applying to collective dominant positions—Whether behavioural commitments given by parties to concentration sufficient for purposes of regulation—Council Regulation (EEC) 4064/89, arts 1, 2, 8. **Gencor Ltd v European Commission (Germany intervening)** (Case T-102/96) [1999] EC 289, CFI.

#### Social security—

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#### State aids—

Private undertaking granted exceptionally long grace period for payment of employees' social security contributions—Whether constituting illegal state aid—EC Treaty, art 92 (now, after amendment, art 87 EC). **Proceedings relating to Déménagements-Manutention Transport SA (DMT)** [1999] EC 601, ECJ.

#### Taxation—

##### Discrimination—

French car tax calculated on basis of six tax bands corresponding to car's power rating—Only imported cars falling in top three tax bands—Rate of increase of tax between top three tax band greater than that between bottom three tax bands—Whether tax system illegally discriminating against imported vehicles—EC Treaty, art 90 (ex art 95). **Tarantik v Direction des Services Fiscaux de Seine-et-Marne (Case C-421/97)** [1999] EC 523, ECJ.

#### Trade marks—

##### Community trade mark—

Examiner refusing to register 'Baby-Dry' as Community trade mark—Applicant appealing against examiner's decision and raising further argument in favour of registration—Examiner's decision upheld—Board of Appeal refusing to consider further argument as that argument not raised before examiner—Whether mark purely descriptive—Whether board obliged to consider all grounds raised in appeal—Council Regulation (EC) 40/94, art 7. **The Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs)** (Case T-163/98) [1999] EC 648, CFI.

##### Exhaustion—

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Garage business specialising in sale of second-hand, repair and maintenance of, certain cars—

Garage using car trade mark in advertisements without authorisation—Trade mark proprietor seeking to prevent garage using its mark—Whether proprietor entitled to prevent such use—Council Directive (EEC) 89/104, arts 5, 6, 7. **Bayerische Motorenwerke AG (BMW) v Deenik (Case C-63/97)** [1999] EC 235, ECJ.

##### 'Likelihood of confusion'—

Aural similarity—Trade mark proprietor seeking to prevent registration of rival trade mark, inter alia, on grounds of aural similarity and high degree of recognition as measured by survey—Criteria to be applied in assessing likelihood of confusion—Council Directive (EEC) 89/104, art 5(1). **Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV** [1999] EC 587, ECJ.

##### Non-similar products or services—

Plaintiff registering trade mark in respect of motor vehicles—Defendant registering same trade mark in respect of cleaning products—Plaintiff seeking injunction to prevent dilution of its mark—Defendant denying that plaintiff's mark had a reputation—Criteria for establishing whether trade mark having reputation—Council Directive (EEC) 89/104, art 5(2). **General Motors Corp v Yplon SA (Case C-375/97)** [1999] EC 865, ECJ.

#### Treaty provisions—

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#### Value added tax—

##### Exemptions—

Health and welfare—Nursing home operated by husband and wife in partnership in Northern Ireland—Partnership having no legal personality under Northern Ireland law—Husband and wife's application to register for value added tax rejected on ground that their activity within health and welfare exemption—Whether activity exempt—Whether exemption limited to activities carried on by legal persons—Value Added Tax Act 1994—Council Directive (EEC) 77/388, art 13A(1)(b), (g). **Gregg v Customs and Excise Comrs, (Case C-216/97)** [1999] EC 775, ECJ.

Insurance transactions—Credit card protection plan offering cardholders indemnification and other forms of assistance on loss or theft of card—Plan operator instructing insurance broker to arrange insurance for cardholders under block policy—Whether plan constituting insurance transactions for purposes of tax exemption—Whether plan constituting one whole or several individual supplies of services—Council Directive (EEC) 77/388, art 13B. **Card Protection Plan Ltd v Customs and Excise Comrs (Case C-349/96)** [1999] EC 339, ECJ.

Land—Exemption for supply of building land—Member state introducing election to waive exemption and reducing scope of exemption—Whether member state entitled to maintain exemption only if conditions existing at time of adoption of directive maintained—Council Directive (EEC) 77/388, art 28(3)(b), Annex F, point 16. **Norbury Developments Ltd v Customs and Excise Comrs (Case C-136/97)** [1999] EC 436, ECJ.

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Value added tax (cont)—

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United Kingdom rules providing tax not deductible on motor cars—Taxpayers purchasing cars for business use—Some cars being used partly for private purposes—Whether member states authorised to exclude deduction where cars essential tools in business of taxable person or could not be used for private purposes by taxable person—Whether member states entitled to retain exclusion after expiration of time limit for introduction of Community rules determining eligibility for deduction—Council Directive (EEC) 67/228, art 11(4)—Council Directive (EEC) 77/388, art 17(6). **Royco Leasing Ltd v Customs and Excise Comrs** (Case C-305/97) [1999] EC 908, ECJ.

Supply of goods or services—

Consideration—Direct link between supply and consideration—Vouchers issued to customers on purchase of fuel redeemable for goods listed in catalogue—Whether value added tax payable on exchange of goods for vouchers—Whether such exchange of goods to be treated as a supply made for a consideration—Whether exchange of goods for vouchers a disposal of goods free of charge—Council Directive (EEC) 77/388, art 5(6). **Kuwait Petroleum (GB) Ltd v Customs and Excise Comrs** (Case C-48/97) [1999] EC 450, ECJ.

Supply of services—

Defendant renting table out for sale of narcotic drugs but not paying VAT on rent received—Tax authorities demanding tax on rental income—Whether supply of table taxable—Council Directive (EEC) 77/388, art 2. **Staatssecretaris van Financiën v Coffeeshop 'Siberië' vof** [1999] EC 560, ECJ.

Taxable amount—

Vouchers issued to customers on purchase of fuel redeemable for goods listed in catalogue—Taxable amount determined by reference to cost of supplying goods—Taxable amount not including price discounts and rebates—Whether 'price discounts' and 'rebates' applicable to reductions covering whole cost of supplying goods in exchange for vouchers—Council Directive (EEC) 77/388, art 11A(3)(b). **Kuwait Petroleum (GB) Ltd v Customs and Excise Comrs** (Case C-48/97) [1999] EC 450, ECJ.

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Freedom of movement—

Freedom of establishment—Italian national convicted in Greece of possession and use of prohibited drugs—Greek legislation providing for automatic expulsion for life of non-nationals convicted of that offence—Whether such expulsion conflicting with Community provisions on freedom of movement—Council Directive (EEC) 64/221, art 3—EC Treaty, arts 48, 52 and 59. **Criminal proceedings against Calfa** (Case C-348/96) [1999] EC 850, ECJ.

Social security—Calculation of benefits where person concerned not simultaneously fulfilling conditions laid down by all the legislation under which periods of insurance or residence completed—Which legislation applicable—Council Regulation (EEC) 1408/71, arts 45, 49—EC Treaty, art 51. **Rijksdienst voor Pensioenen v Lustig** (Case C-244/97) [1999] EC 75, ECJ.

Social security—Income support—English worker returning from France, declaring intention to remain permanently in United Kingdom and applying for income support—Application refused on grounds that applicant not 'habitually resident'—Whether requirement for appreciable period of residence compatible with Community law—Council Regulation (EEC) 1408/71, arts 1(h), 10a. **Swaddling v Adjudication Officer** (Case C-90/97) [1999] EC 217, ECJ.

## EUROPEAN COURT OF JUSTICE

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Without prejudice negotiations—

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Parties having without prejudice meeting—Patent-holder allegedly stating in meeting its intention to bring patent infringement proceedings—Plaintiff using statement to ground proceedings for declaration of non-infringement—Patent-holder applying to strike out claim as abuse of process—Whether patent-holder's statement protected by without prejudice rule. **Unilever plc v The Procter & Gamble Co** [1999] 2 691, Ch D.

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Defendant administrator and trustee of intestate's estate—Personal liability to account for wrongful receipt of trust money—Relief—Legal advice followed—Defendant acting honestly and reasonably—Whether defendant ought to be relieved from liability. **Re Evans (decd), Evans v Westcombe** [1999] 2 777, Ch D.

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Extradition crime—

Definition—

Conduct which if it occurred in the United Kingdom, would constitute an offence—Date when conduct must constitute an offence—Spanish government accusing former head of state of conspiracy to torture and torture outside United Kingdom between 1972 and 1990—Torture abroad only becoming offence in United Kingdom in 1988—Whether sufficient that torture an offence at date of extradition request—Criminal Justice Act 1988, s 134(1)—Extradition Act 1989, s 2. **R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (Amnesty International intervening)** (No 3) [1999] 2 97, HL.

Immunity from extradition—

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Immunity for acts performed in exercise of official functions as head of state—Whether torture part of official functions of a head of state—Whether former head of state entitled to claim immunity from extradition for crime of torture—State Immunity Act 1978, s 20. **R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (Amnesty International intervening)** (No 3) [1999] 2 97, HL.

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Detention following arrest on suspicion—

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## FAMILY PROCEEDINGS

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Leave—Adopted child—Application for leave to apply for contact order in respect of adopted child—Half-sister of adopted child applying for contact order—Adoptive mother refusing to agree to contact—Whether leave to apply should be granted—Factors to be taken into account—Children Act 1989, s 10. **Re S (a minor) (adopted child: contact)** [1999] 1 648, Fam D.

Care order—

Designated local authority—Child's ordinary residence—Local authority providing child with accommodation by placing her with foster parents—Foster parents moving with child to different local authority area—First local authority applying for care order—Child's mother moving out of area of first local authority—Whether child ordinarily resident within area of first local authority—Children Act 1989, ss 31(8), 105(6). **Re R (a child), North Yorkshire CC v Wiltshire CC** [1999] 4 291, Fam D.

Order restricting applications without leave of court—

Circumstances in which such an order could be granted—Children Act 1989, s 91(14). **Re P (a child) (residence order: restriction order)** [1999] 3 734, CA.



## **FAMILY PROCEEDINGS** (cont)

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Handicapped daughter of orthodox Jewish rabbi being fostered by Catholic foster parents—Court making residence order to foster parents—Parents applying for variation of residence order—Judge holding that variation not in interests of child's welfare—Whether child had presumptive right to be brought up by her own parents and in her own religion—Whether judge had given sufficient weight to child's religious and cultural heritage in assessing child's welfare—Children Act 1989, s 1. **Re P (a child) (residence order: restriction order)** [1999] 3 734, CA.

## **FAMILY PROVISION**

Person who immediately before deceased's death was being maintained by deceased—

Dependant—

Co-habitees separating after birth of disabled daughter—Mother living with and caring for daughter—Court of Protection making payments for daughter's maintenance out of damages awarded to her for medical negligence—Daughter dying intestate and estate vesting jointly in her mother and father—Mother applying for provision from daughter's estate as dependant—Whether daughter could have assumed responsibility for mother's maintenance—Inheritance (Provision for Family and Dependents) Act 1975, ss 1(1)(e), 3(4). **Re B (dec'd)** [1999] 2 425, Ch D.

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State benefits—

Income of husband and disabled wife consisting entirely of state benefits—Husband caring for wife and receiving invalid care allowance—Wife being killed and husband injured in road traffic accident caused by defendant's negligence—Benefits relating to wife's disability ceasing to be payable but husband receiving incapacity benefit—Husband claiming for loss of financial dependency upon wife—Whether there could be financial dependency where claimant entirely dependent on state benefits before and after deceased's death—Whether invalid care allowance to be taken into account in assessing dependency—Fatal Accidents Act 1976, s 3. **Cox v Hockenhull** [1999] 3 577, CA.

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Fraud exception. *See* **Bank** (Documentary credit—Irrevocable credit—Fraud exception).

## FREEDOM OF MOVEMENT

European Community—

Generally. *See* **European Community** (Freedom of movement).

Workers. *See* **European Community** (Workers—Freedom of movement).

## FREIGHT

Shipping. *See* **Shipping** (Freight).

## FRESH EVIDENCE

Criminal proceedings—

Reference by Criminal Cases Review Commission. *See* **Criminal law** (Appeal—Reference by Criminal Cases Review Commission—Fresh evidence).

## GAMING

Betting—

Licensed betting office—

Application for licence—Refusal—Appeal—Costs of appeal—Applicant successfully appealing to Crown

Court against refusal to grant betting licence—Crown Court making no order as to costs—Whether

costs should normally follow event in betting licensing appeals—Crown Court Rules 1982, r 12. **R v**

**Crown Court at Stafford, ex p Wilf Gilbert (Staffs) Ltd** [1999] 2 955, QBD.

## GENERAL AVERAGE

*See* **Shipping** (General average).

## GIFT

Inheritance tax—

Lifetime transfer. *See* **Inheritance tax** (Lifetime transfer).

## GOODS VEHICLE

Generally. *See* **Road traffic** (Goods vehicle).

## GRAZING RIGHTS

Common of grazing. *See* **Commons** (Right of common—Common of grazing).

## GREENS

Town or village green—

Registration. *See* **Commons** (Registration—Town or village green).

## GUARANTEE

Co-sureties—

Action for contribution—

Parties jointly and severally guaranteeing company's liabilities to bank—Guarantee requiring demand

by bank to be made in writing—Plaintiff making payment to discharge guarantee without written

demand by bank—Plaintiff seeking contribution from co-surety—Whether co-surety liable to plaintiff

without formal demand from bank. **Stimpson v Smith** [1999] 2 833, CA.

Time charterparty. *See* **Shipping** (Time charterparty—Guarantee).

## HARASSMENT

Criminal proceedings—

Generally. *See* **Criminal law** (Harassment).

## HEAD OF STATE

Former head of state—

Immunity from extradition. *See* **Extradition** (Immunity from extradition—Former head of state).

## HEALTH

Health and safety at work. *See* **Health and safety at work**.  
Mental health. *See* **Mental health**.

## HEALTH AND SAFETY AT WORK

Employer's duties—  
Duty to employees—  
Breach—Employer fined for health and safety offences and challenging level of time—Factors to be taken into account in imposing fines—Health and Safety at Work etc Act 1974. **R v F Howe & Son (Engineers) Ltd** [1999] 2 249, CA.

## HEDGE

Boundary. *See* **Boundary** (Hedge).

## HIGH COURT

Crown Court—  
Supervisory jurisdiction of High Court. *See* **Crown Court** (Supervisory jurisdiction of High Court).  
Transfer—  
Transfer of proceedings between High Court and county court—  
Mortgagee possession actions. *See* **Practice** (Transfer of proceedings between High Court and county court—Proceedings which must be in county court—Mortgagee possession actions).

## HOMELESS PERSON

Housing. *See* **Housing** (Homeless person).  
Temporary accommodation—  
Tenancy or licence. *See* **Landlord and tenant** (Tenancy—Tenancy distinguished from licence—Provision of temporary accommodation for homeless).

## HOMOSEXUALITY

Landlord and tenant—  
Succession of homosexual partner on death of original tenant. *See* **Rent restriction** (Death of tenant—Homosexual partner).

## HOSPITAL

Mental hospital—  
Admission of patient. *See* **Mental health** (Admission of patient to hospital).  
Discharge from hospital. *See* **Mental health** (Patient—Discharge from hospital).

## HOUSE OF LORDS

Appeal—  
Appeal when outcome merely academic—  
Lis affecting rights and obligations of parties no longer in existence by time of appeal—Whether House of Lords should nevertheless hear and determine appeal because it involved an issue of public law involving public authority. **R v Secretary of State for the Home Dept, ex p Salem** [1999] 2 42, HL.

## HOUSING

Homeless person—  
Duty of housing authority to provide accommodation—  
Duty to provide accommodation to person they have reason to believe may be homeless and have a priority need—Council offering applicant and his family accommodation in two separate hostels—Applicant rejecting accommodation and applying for a judicial review—Whether council having duty to provide 'suitable' accommodation—Whether accommodation offered suitable—Housing Act 1996, ss 176, 188, 206. **R v Ealing London Borough Council, ex p Surdonja** [1999] 1 566, QBD.  
Local authority refusing application for accommodation—Applicant seeking internal review of decision—Applicant appealing to county court against review decision—Housing authority's duty to accommodate replaced by discretion to do so—Whether county court having jurisdiction to grant mandatory interim injunction requiring local authority to accommodate applicant pending appeal—County Courts Act 1984, s 38—Supreme Court Act 1981, s 37—Housing Act 1996, ss 202, 204. **Ali v Westminster City Council, Nairne v Camden London BC** [1999] 1 450, CA.  
Housing benefit. *See* **Social security** (Housing benefit).  
Local authority houses—  
Tenant's right to buy—  
Married couple holding joint secure tenancy of local authority property and claiming right to buy—Couple separating before completing purchase—Couple divorcing and wife serving notice on local authority terminating joint tenancy—Husband moving back into property and local authority bringing possession proceedings—Husband applying for order for avoidance of disposition of property by wife—Whether termination notice a disposition of property—Matrimonial Causes Act 1973, s 37. **Bater v Bater, Greenwich London BC v Bater** [1999] 4 944, CA.  
Transfer of tenancy—  
Council granting secure joint tenancy to cohabitants—Female cohabitant moving out and applicant moving into flat as remaining tenant's cohabitant—Remaining tenant moving out and applicant applying for order transferring his interest in flat to her—Whether court had jurisdiction to make transfer order—Whether court could make occupation order—Family Law Act 1996, ss 36, 53, Sch 7, paras 3, 7. **Gay v Sheeran** [1999] 3 795, CA.  
Persons in need of care and attention—  
Duty of local authority to provide accommodation—  
Circumstances in which applicant's conduct entitles local authority to treat its duty as discharged—National Assistance Act 1948, s 21. **R v Kensington and Chelsea Royal London BC, ex p Kujtim** [1999] 4 161, CA.

## HUSBAND AND WIFE

Divorce. *See* **Divorce**.



## HUSBAND AND WIFE (cont)

Matrimonial home—

Protection against eviction—

Wife entitled to occupy by virtue of estate or interest—Wife holding matrimonial home under secure tenancy—Wife leaving husband and obtaining alternative accommodation—Landlord seeking possession of property from husband—Whether husband had continuing right to occupy property—Matrimonial Homes Act 1983, s 1(1). **Sanctuary Housing Association v Campbell** [1999] 3 460, CA.

## ILLEGALITY

Contract. *See* **Contract** (Illegality).

## IMMIGRATION

Appeal—

Leave to appeal—

Non-compliance with procedural requirement—Secretary of State applying for leave to appeal against decisions to grant asylum—Secretary of State not using prescribed form in making application—Whether failure to use prescribed form rendering appeal a nullity—Immigration Appeals (Procedure) Rules 1984, r 38—Asylum Appeals (Procedure) Rules 1993, r 13(3). **R v Immigration Appeal Tribunal, ex p Jeyanthan, Ravichandran v Secretary of State for the Home Dept** [1999] 3 231, CA.

Deportation—

Refugee—

Asylum—Deportation to third country—Third country not recognising persecution by non-state agents where state not complicit—Whether third country 'safe'—Asylum and Immigration Act 1996, s 2(2)(c)—Convention relating to the Status of Refugees 1951. **R v Secretary of State for the Home Dept, ex p Adan, R v Secretary of State for the Home Dept, ex p Subaskaran, R v Secretary of State for the Home Dept, ex p Aitseguer** [1999] 4 7774, CA.

European Community. *See* **European Community** (Immigration).

Leave to enter—

Refugee—

Asylum—Fear of persecution held by applicants for refugee status—Pakistani state discriminating against women and not providing appellants with protection against their husbands' violence—Appellants seeking asylum on grounds of well-founded fear of persecution by reason of membership of a particular social group—Whether appellants were members of 'a particular social group'—Convention and Protocol relating to the Status of Refugees, art 1A(2). **R v Immigration Appeal Tribunal and another, ex p Shah (United Nations High Commr for Refugees intervening) Islam v Secretary of State for the Home Dept (United Nations High Commr for Refugees intervening)** [1999] 2 545, HL.

Refugee—

Deportation. *See* **Deportation—Refugee, ante**.

Illegal entry or presence—

Provision of international convention protecting refugees from penalties for illegal entry or presence—Scope and effect of provision—UN Convention relating to the Status of Refugees 1951, art 31(1). **R v Uxbridge Magistrates' Court, ex p Adimi, R v Secretary of State for the Home Dept, ex p Sorani, R v Crown Prosecution Service, ex p Sorani, R v Secretary of State for the Home Dept, ex p Kazui** [1999] 4 520, QBD.

Leave to enter. *See* **Leave to enter—Refugee, ante**.

## IMMUNITY

Extradition—

Immunity from extradition. *See* **Extradition** (Immunity from extradition).

## IMPLIED TERM

Contract—

Employment—

Generally. *See* **Employment** (Contract of service—Implied term).

Generally. *See* **Contract** (Implied term).

Sale of goods—

Merchantable quality. *See* **Sale of goods** (Implied condition as to merchantable quality).

## IMPRISONMENT

False imprisonment. *See* **False imprisonment**.

Life imprisonment. *See* **Sentence** (Life imprisonment).

## INCOME SUPPORT

European Community—

Freedom of movement of workers. *See* **European Community** (Workers—Freedom of movement—Social security—Income support).

Generally. *See* **Social security** (Income support).

## INCOME TAX

Deduction in computing profits—

Expenditure wholly and exclusively laid out or expended for purposes of trade—

Disciplinary proceedings arising out of conduct of business—Stockbroker being found guilty of misconduct by regulatory body—Stockbroker incurring legal costs in defending proceedings and seeking to deduct them in calculating profits—Whether legal expenses incurred in defending disciplinary proceedings expenditure incurred for purposes of trade—Income and Corporation Taxes Act 1970, s 130(a). **McKnight (Inspector of Taxes) v Sheppard** [1999] 3 491, HL.

Profits—

Deduction in computing profits. *See* **Deduction in computing profits, ante**.

## INDEMNITY

Agent—

Termination of agency. *See* **Agent** (Termination of agency—Indemnity).

## INDEMNITY (cont)

### Misrepresentation—

#### Duty of disclosure—

Plaintiff guaranteeing subsidiary company's performance obligations and confirming that company would remain its subsidiary—Plaintiff selling company and wishing to transfer guarantee obligations to defendant—Defendant seeking to obtain consent of beneficiaries to transfer and indemnifying plaintiff—Defendant promising to provide security for indemnity—Beneficiaries not giving consent to transfer and defendant failing to make security payment—Plaintiff seeking specific performance and defendant raising non-disclosure defence—Whether plaintiff under duty to disclose all material facts in respect of indemnity agreement. **Geest plc v Fyffes plc** [1999] 1 Comm 672, QBD.

### Professional indemnity—

Insurance. *See* **Insurance** (Liability insurance—Professional indemnity insurance).

### Sale of ship—

Seller's indemnity. *See* **Shipping** (Sale of ship).

## INDICTMENT

### Bill of indictment—

Generally. *See* **Criminal law** (Bill of indictment).

### Crown Court—

Supervisory jurisdiction of High Court. *See* **Crown Court** (Supervisory jurisdiction of High Court—Trial on indictment).

## INDUSTRIAL TRIBUNAL

### Procedure—

#### Complaint of unfair dismissal and breach of contract—

Presentation of complaint to tribunal—Time limit for presentation of complaint—Not reasonably practicable for complaint to be presented within prescribed period—Employee not attending work because of depressive illness and being dismissed—Employee bringing industrial tribunal proceedings outside three-month limitation period—Tribunal finding that employee capable of giving instructions to solicitors during first half of limitation period but not final half—Whether 'reasonably practicable' for employee to have made claim during prescribed period—Employment Rights Act 1996, s 111(2)(b)—Industrial Tribunals Extension of Jurisdiction (England and Wales) Order 1994, art 7(c). **Schultz v Esso Petroleum Co Ltd** [1999] 3 338, CA.

## INFORMATION (KNOWLEDGE)

### Confidential information—

Banker/client relationship. *See* **Bank** (Banker/client relationship—Duty of bank—Duty of confidentiality).

Generally. *See* **Confidential information**.

#### Medical practitioner—

Disclosure. *See* **Medical practitioner** (Doctor and patient—Disclosure of confidential information).

### Disclosure—

#### Confidential information—

Discovery of documents—Privilege. *See* **Discovery** (Privilege—Confidential documents).

## INHERITANCE TAX

### Lifetime transfer—

#### Gift of property subject to a reservation—

Transfer of freehold interest subject to leases in favour of donor—Whether property enjoyed to exclusion of donor—Whether property subject to a reservation of benefit—Finance Act 1986, s 102. **Ingram (exors of the estate of Lady Ingram (dec'd)) v IRC** [1999] 1 297, HL.

## INJUNCTION

### Breach of injunction—

Committal for contempt of court. *See* **Contempt of court** (Committal—Breach of injunction).

### Confidential information—

#### Power of court to restrain disclosure—

Generally. *See* **Confidential information** (Injunction against disclosure of information).

### Mareva injunction—

Generally. *See* **Practice** (Pre-trial or post-judgment relief—Mareva injunction).

### Patent—

#### Infringement—

Form of order. *See* **Patent** (Infringement—Injunction).

## INJURY

### Compensation—

Criminal injuries. *See* **Compensation** (Criminal injuries).

### Damages—

Generally. *See* **Damages** (Personal injury).

## INPUT TAX

Value added tax. *See* **Value added tax** (Input tax).

## INQUEST

### Coroner—

Generally. *See* **Coroner** (Inquest).

## INQUIRY

Tribunal of inquiry. *See* **Tribunal** (Tribunal of inquiry).

## INSANITY

### Criminal cases—

Defence in. *See* **Criminal law** (Insanity).

## INSOLVENCY

### Petition—

#### Conditions for presentation—

Debtor's petition—Order requiring payment of deposit as security for official receiver's fees prior to issue of petition—Applicant unable to afford deposit—Whether order ultra vires legislation conferring powers on Lord Chancellor to provide payment of deposit—Whether order abrogating applicant's constitutional right of access to courts or violating right to fair hearing—Insolvency Act 1986, s 415—Insolvency Fees Order 1986, arts 8(1), 9(b)—Convention for the Protection of Human Rights and Fundamental Freedoms, arts 6, 14. **R v Lord Chancellor, ex p Lightfoot** [1999] 4 583, CA.

### Statutory demand—

#### Debt—

Costs—Plaintiff appealing against decision to strike out proceedings against defendant—Defendant being made bankrupt before appeal heard but discharged before judgment in appeal—Court allowing plaintiff's appeal and making costs order against defendant in respect of pre-bankruptcy period—Plaintiff serving statutory demand for sum covered by costs order—Whether order for costs a contingent liability at commencement of bankruptcy—Insolvency Act 1986, s 382. **Glenister v Rowe** [1999] 3 452, CA.

### Transaction at undervalue—

#### Linked transactions—

Company's assets including computer equipment held on lease—Purchaser wishing to buy company's business but not wanting to pay for goodwill—Company transferring goodwill of business to subsidiary and selling subsidiary to purchaser for £1—Purchaser's parent company agreeing to pay rent to company for use of computer equipment—Company being wound up and liquidator contending that share sale was at an undervalue—Whether lease agreement to be considered separately from share sale agreement—Insolvency Act 1986, s 238. **Phillips v Brewin Dolphin Bell Lawrie Ltd** [1999] 2 844, CA.

### Voluntary arrangement—

#### Unfair prejudice to creditor's interests—

Creditor having potential rights against debtor's insurers—Approval of voluntary arrangement by other creditors—Arrangement impairing rights of creditor—Whether arrangement causing unfair prejudice to creditor's interests—Meaning of 'creditor'—Insolvency Act 1986, s 262. **Sea Voyager Maritime Inc v Bielecki (t/a Hughes Hooker & Co)** [1999] 1 628, Ch D.

#### Variation—

Individual voluntary arrangement containing no power to vary terms—Applicant creditor waiving right to dividend in voluntary arrangement—Other creditors agreeing to variation of voluntary arrangement—Applicant challenging variation—Whether voluntary arrangement could be varied without express power of variation—Insolvency Act 1986, s 263(3). **Raja v Rubin** [1999] 3 73, CA.

## INSURANCE

### Aviation insurance—

#### War risks—

Plaintiff airline insuring against war risks and seizure—Spare parts cover extending to seizure risk but not war risk—Policy providing for recovery of sue and labour costs—Foreign invader taking aircraft and spare parts belonging to plaintiff airline—Whether plaintiff could recover for lost spare parts—Whether plaintiff could recover sue and labour costs. **Kuwait Airways Corp v Kuwait Insurance Co SAK** [1999] 1 Comm 481, HL.

### Broker—

#### Duty—

Bank obtaining through brokers composite insurance with owner of charged property—Insurers repudiating liability on grounds of non-disclosure by owner—Whether brokers in breach of duty of care to bank in failing to ensure inclusion of mortgagee protection clause in policy. **FNCB Ltd v Barnett Devanney & Co Ltd** [1999] 2 Comm 233, CA.

Plaintiff instructing defendant brokers to obtain fire insurance for nightclub premises—Defendant instructing Lloyd's brokers to obtain quotation from underwriters—Lloyd's brokers providing quotation including auditorium warranty—Lloyd's brokers placing insurance on terms of quotation—Fire damaging plaintiff's premises—Underwriters disclaiming liability because of breach of auditorium warranty—Plaintiff suing defendant for allegedly failing to explain auditorium warranty—Defendant contending that Lloyd's brokers had duty to advise plaintiff about warranty—Whether Lloyd's brokers having duty to advise plaintiff. **Pangood Ltd v Barclay Brown & Co Ltd (Bradstock Blunt & Thompson Ltd, third party)** [1999] 1 Comm 460, CA.

### Claim—

#### Liability—

Contract providing payment of premiums as a condition precedent to any liability—Contract entitling insurer to retain premium and terminate all liability following breach of condition precedent—Insured breaching policy and insurers serving notice terminating agreement—Whether insured could recover on claim made after service of notice—Whether insurers could recover money paid in satisfaction of claim made before breach. **Kazakstan Wool Processors (Europe) Ltd v Nederlandsche Credietverzekering Maatschappij NV** [1999] 2 Comm 445, QBD.

### Contract of insurance—

#### Commercial inclusive policy—

Insurance policy containing separate sections providing different types of cover—Plaintiff selecting fire and theft sections—Theft section including burglar alarm warranty—Plaintiff breaching burglar alarm warranty—Plaintiff making claim under fire section—Whether breach of burglar alarm warranty discharged insurers' liability under fire section. **Printpak (a firm) v AGF Insurance Ltd** [1999] 1 Comm 466, CA.

#### Construction of terms—

Primary policy of insurance covering promoter of concert tour against losses should tour be cancelled, rescheduled, abandoned or curtailed—Primary policy coverage subject to one show deductible—Deductible buy-back policy indemnifying promoter for losses which would have been recoverable under primary policy but for one show deductible—Concert being cancelled and rescheduled because of performer's illness—Second concert having to be cancelled because of rescheduling—Whether losses occasioned by cancellation of second concert recoverable under deductible buy-back policy. **Quinta Communications SA v Warrington (Odyssey Re (London) Ltd intervening)** [1999] 2 Comm 123, CA.



## INSURANCE (cont)

### Credit insurance—

#### Exclusion clause—

Plaintiff taking out insurance for bad debts—Policy excluding liability for losses arising from delivery of goods whose export from or import into the insured's place of business was prohibited—Insured delivering beef to customer—Customer failing to pay for beef due to ban on British beef exports—Plaintiff claiming under policy—Insurer contending that loss excluded under policy—Whether exclusion clause applied to domestic transactions. **G & G B Hewitt Ltd v SA Namur-Assurances du Credit** [1999] 1 Comm 851, CA.

### Disclosure—

#### Duty to disclose—

Duty of utmost good faith—Respondent guaranteeing liabilities of Lloyd's names under plans marketed to them—Names taking out endowment/life policies as part of plans and assigning them to respondent as security—Names suffering losses and respondent making payments under guarantees—Names contending that respondent dishonestly concealed from them its knowledge of impending losses when entering agreements—Whether concealment of such information breaching insurer's common law duty of disclosure—Whether breach of statutory prohibition on dishonest concealment giving rise to action for damages—Financial Services Act 1986, s 47. **Norwich Union Life Insurance Co Ltd v Qureshi, Aldrich v Norwich Union Life Insurance Co Ltd** [1999] 2 Comm 707, CA.

### Exclusion clause—

Credit insurance. *See* Credit insurance—Exclusion clause, *ante*.

### Insurance transactions—

#### Value added tax—

Exemption—European Community. *See* **European Community** (Value added tax—Exemptions—Insurance transactions).

### Jurisdiction—

Conflict of laws. *See* **Conflict of laws** (Jurisdiction—Challenge to jurisdiction—Claim by insurer).

### Liability insurance—

#### Professional indemnity insurance—

Professional indemnity insurance policy indemnifying insured for claims alleging neglect or omission—Policy providing that insured not indemnified for claim arising from dishonest act of employee perpetrated after it could have been reasonably discovered—Third party bringing claim against insured for damages for breach of contract but not alleging fraud—Insured settling claim and claiming indemnity under neglect provision—Insurers alleging that true cause of loss was event falling within exception—Whether insured required to prove that neglect was proximate cause of loss. **MDIS Ltd (formerly McDonnell Information Systems Ltd) v Swinbank** [1999] 2 Comm 722, CA.

### Marine insurance—

Generally. *See* **Marine insurance**.

Professional indemnity insurance. *See* Liability insurance—Professional indemnity insurance, *ante*.

### Reinsurance—

#### Misrepresentation—

Reinsured renewing reinsurance for warehouse—Reinsured's brokers telling reinsurer they had been informed that warehouse had hydrants—Warehouse only having dry risers—Fire destroying warehouse and reinsurer seeking to avoid for misrepresentation—Whether reinsured's statement a representation of fact or belief. **Sirius International Insurance Corp v Oriental Assurance Corp** [1999] 1 Comm 699, QBD.

#### Risks insured—

Breach of warranty—Defendant insuring vessels under policy governed by Venezuelan law—Policy containing class maintenance guarantee—Claimants providing reinsurance cover 'as original'—Reinsurance policy containing class maintenance warranty—Shipowners making claim under insurance policy in respect of two non-classed vessels—Breach of guarantee not terminating insurance policy under Venezuelan law—Claimants contending that breach of class warranty in reinsurance contract discharging their liability—Whether reinsurance warranty 'free standing' from warranties in original cover. **Groupama Navigation et Transports v Catatumbo CA Seguros** [1999] 2 Comm 970, QBD.

Copper-mining company constructing new furnace and acid plant—Construction contracts providing for period of testing to full design capacity following commissioning—Company's operational insurance policy providing that policy not covering object 'before it had been installed and completely tested'—Policy defining 'completely tested' as operating 'in the capacity for which it was designed as part of the normal process'—Insurer reinsuring risk on same terms as original—Lead reinsurer putting down scratch that reinsurance subject to exclusion of testing and commissioning—Furnace and acid plant suffering damage after start-up but before testing—Whether furnace and acid plant attaching to reinsurance policy. **Kennecott Utah Copper Corp v Cornhill Insurance plc** [1999] 2 Comm 801, QBD.

Plaintiffs becoming members of insurance pool managed by agent—Members of pool agreeing to apportion loss in event of insolvency of pool member—Defendant reinsuring plaintiffs for loss arising out of risks written by agent—Whether reinsurance agreement covered loss arising out of apportionment agreement. **Württembergische AG Versicherungsbeteiligungsgesellschaft v Home Insurance Co** [1999] 1 Comm 535, CA.

#### Transfer of long-term business—

Insurer reinsuring policies with subsidiary—Parties proposing to 'transfer' the subsidiary's reinsurance business to insurer—Whether proposed arrangement was a 'transfer'—Insurance Companies Act 1982, Sch 2C, Pt 1, para 1. **Re Friends' Provident Life Office, Re Friends' Provident Linked Life Assurance Ltd** [1999] 2 Comm 437, CA.

### Society of Lloyd's—

#### Premium trust deed—

Lloyd's requiring names to execute trust deed—Trust fund including premiums and other monies belonging or becoming payable to names in connection with underwriting—Trust deed containing power of amendment—Lloyd's exercising power to bring litigation recoveries within trust—Whether litigation recoveries covered by unamended deed—Whether power of amendment properly exercised. **Society of Lloyd's v Robinson** [1999] 1 Comm 545, HL.

## INSURANCE (cont)

### Subrogation—

#### Recoupment from insured—

Insured claiming on insurance policy for damage allegedly caused by third parties—Insurers repudiating liability and insured bringing actions against insurers and third parties—One of third parties making payment into court—Insurers settling action by paying sum equal to amount paid into court by third party—Third party being found liable for amount in excess of payment into court—Whether insurers entitled to lien over sum paid into court by third party—Whether insured entitled to deduct irrecoverable costs from sum recouped by insurers. **England v Guardian Insurance Ltd** [1999] 2 Comm 481, QBD.

### Value added tax—

#### Exemption—

Insurance transactions—European Community. *See* **European Community** (Value added tax—Exemptions—Insurance transactions).

### War risks—

Aviation insurance. *See* Aviation insurance—War risks, *ante*.

## INTELLECTUAL PROPERTY

### Copyright—

#### Copyright Tribunal—

Costs. *See* **Costs** (Copyright Tribunal).

European Community. *See* **European Community** (Copyright).

Generally. *See* **Copyright**.

### Patent—

Generally. *See* **Patent**.

## INTEREST

Arbitration award. *See* **Arbitration** (Award—Interest).

### Damages—

#### Personal injury—

Special damages—Plaintiff receiving state benefits—Whether benefits received to be deducted when calculating interest on special damages—Social Security (Recovery of Benefits) Act 1997, s 17. **Wadey v Surrey CC** [1999] 2 334, CA.

## INTERLOCUTORY INJUNCTION

Mareva injunction. *See* **Practice** (Pre-trial or post-judgment relief—Mareva injunction).

## INTERNATIONAL LAW

Private international law. *See* **Conflict of laws**.

## INTERNET

### Defamation—

Publication. *See* **Libel and slander** (Publication—Internet posting).

## INTESTACY

### Distribution of intestate's estate—

Generally. *See* **Administration of estates** (Distribution).

## INVESTMENT BUSINESS

### Regulation—

#### Client account—

SFA ordering company to cease investment business and transfer client accounts—Company opening new client account to segregate potential surpluses on existing client accounts from general corporate funds—Company intending that any actual surplus should go into its general funds—Company going into liquidation with deficit on client accounts—Whether new account held on trust for clients—Whether creation of such a trust a voidable preference—Whether post-liquidation payment from account an unlawful disposition of company property—Insolvency Act 1986, ss 127, 239—Securities and Futures Authority Rules, r 4–67. **Re Branston & Gothard Ltd** [1999] 1 Comm 289, Ch D.

#### Information given to regulatory body—

Privilege—Financial services regulatory body conducting inquiry into firm of stockbrokers managed by claimants—Defendants providing regulatory body with information by letter—Claimants bringing proceedings for libel against defendants—Whether letter attracting absolute privilege. **Mahon v Rahn (No 2)** [1999] 2 Comm 789, QBD.

## JOINT TORTFEASORS

### Acts within course of employment—

Vicarious liability. *See* **Vicarious liability** (Master and servant—Act within course of employment—Joint tortfeasors).

## JOURNALIST

Prison visits. *See* **Prison** (Visits—Visits by journalists).

## JUDGE

### Bias—

Natural justice. *See* **Natural justice** (Judge—Bias).

### Mode of address—

#### Recorder—

Recorder of Cardiff. **Practice Direction** [1999] 2 352, Supreme Ct.

## JUDGMENT

Default judgment—

Setting aside judgment—

Claimant obtaining default judgment against defendant—Defendant's successor applying to have judgment set aside after seven years—Judge concluding that there was defence on merits and setting aside judgment—Claimant appealing and contending that defendant had taken tactical decision not to challenge judgment—Whether judgment should have been set aside. **J H Rayner (Mincing Lane) Ltd v Cafénorte SA Importadora** [1999] 2 Comm 577, CA.

Default of defence. *See* Default of defence—Setting aside judgment, *post*.

Plaintiff obtaining default judgment—Plaintiff attempting to enforce judgment by attaching assets held in Italian bank—Bank transferring assets in apparent breach of the attachment—Court holding that default judgment should be set aside on terms—Plaintiff contending that defendant had not been frank about transfer on application to set aside—Plaintiff further contending that transfer arguably gave it enforceable rights in Italy against bank—Whether defendant having duty of full and frank disclosure—Whether judgment should be set aside on different terms. **J H Rayner (Mincing Lane) Ltd v Cafénorte SA Importadora** [1999] 1 Comm 120, QBD.

Default of defence—

Setting aside judgment—

Judgment in default of defence obtained against defendant for failure to serve defence within time stipulated—Application by defendant to set aside judgment—Test to be applied—Whether necessary for court to be satisfied there was a real likelihood that defendant would succeed—Whether judgment should be set aside. **Day v RAC Motoring Services Ltd** [1999] 1 1007, CA.

Foreign. *See* **Conflict of laws** (Foreign judgment).

Handed down judgments—

Judgments in advance of hearing—

Approved judgments. **Practice Note** [1999] 1 125, Supreme Ct.

## JURY

Direction to jury—

Inquest. *See* **Coroner** (Inquest—Directions to jury).

## JUSTICES

Generally. *See* **Magistrates**.

Licensing—

Betting office. *See* **Gaming** (Betting—Licensed betting office—Application for licence).

## LAND

Boundary. *See* **Boundary**.

Common land—

Generally. *See* **Commons**.

Disposal of land—

Power to demise land—

Duty to obtain best consideration—Lessor of local authority land covenanting to use best endeavours to employ specified number of employees—Whether job creation relevant to local authority's obligation to obtain best consideration—Local Government Act 1972, s 123. **R v Pembrokeshire CC, ex p Coker** [1999] 4 1007, QBD.

Local authority. *See* **Local authority** (Land).

Registration—

Generally. *See* **Land registration**.

Summary proceedings for possession—

Land occupied solely by persons who entered into or remained in occupation without licence or consent—

Licensee's right to bring proceedings—Respondent needing to carry out certain work on land owned by third party—Appellants unlawfully occupying land—Owner granting respondent licence to occupy land for purpose of carrying out works—Respondent not having occupation of land—Respondent seeking summary possession order against appellants—Whether respondent had sufficient interest in land to rely on summary possession proceedings. **Dutton v Manchester Airport plc** [1999] 2 675, CA.

## LAND REGISTRATION

Overriding interest—

Rights of person in actual occupation of land—

Option in lease of part of premises giving tenant option to purchase reversion in whole of premises—Tenant in actual occupation—Whether option overriding interest—Whether option enforceable against purchaser of reversion—Land Registration Act 1925, s 70(1)(g). **Wallcite Ltd v Ferrishurst Ltd, Ferrishurst Ltd v Wallcite Ltd** [1999] 1 977, CA.

## LANDLORD AND TENANT

Business premises—

Tenancy—

Tenant at will—Plaintiff occupying premises under two successive agreements of less than six months—

Plaintiff holding over after expiry of second agreement while negotiating for grant of lease—

Defendant terminating plaintiff's right of occupation more than 12 months after it first occupied premises—Whether plaintiff had been in occupation of premises as tenant for period exceeding 12 months—Landlord and Tenant Act 1954, s 43(3). **Cricket Ltd v Shaftesbury plc** [1999] 3 283, Ch D.

Covenant—

Quiet enjoyment—

Noise—Local authority landlords letting flats with inadequate soundproofing—Tenants hearing everyday activities of their neighbours—Whether landlords breaching covenant for quiet enjoyment. **Southwark London BC v Mills, Baxter v Camden London BC** [1999] 4 449, HL.



## LANDLORD AND TENANT (cont)

### Eviction—

#### Unlawful eviction of tenant—

Damages—Joint secure tenancy—Wife obtaining ouster injunction requiring husband to leave property—Short notice to quit served by wife ineffective to determine joint tenancy—Local authority believing notice to be effective and excluding husband from property—Whether unlawful eviction—Whether husband entitled to damages—Measure of damages—Housing Act 1988, ss 27, 28. **Osei-Bonsu v Wandsworth London BC** [1999] 1 265, CA.

### Flats—

#### Tenants' right to acquire landlord's reversion—

Disposal by landlord—Tenants' rights of first refusal—Disposal of reversion to landlord's subsidiary company—Subsidiary's shares sold to company wishing to purchase flats—Landlord failing to give notice to tenants prior to disposal—Whether disposal a 'relevant disposal'—Whether defendant a subsidiary of landlord at time of disposal—Landlord and Tenant Act 1987, Pt I, ss 4(2), 20(1). **Michaels v Harley House (Marylebone) Ltd** [1999] 1 356, CA.

### Forfeiture of lease—

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### Lease—

#### Grant—

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#### Reversion—

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#### Validity—

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### Long tenancy at low rent—

#### Continuation as statutory tenancy—

Contractual tenancy held by joint tenants but only one tenant resident in premises on expiration of tenancy by effluxion of time—Tenant declared bankrupt and trustee in bankruptcy disclaiming lease—Whether bankrupt tenant having right to remain in premises after determination date—Whether continuation tenancy part of bankrupt tenant's estate—Landlord and Tenant Act 1954, Pt I—Insolvency Act 1986, s 283. **De Rothschild v Bell (a bankrupt)** [1999] 2 722, CA.

### Notice to quit—

#### Double rent—

Tenant exercising option to determine lease—Landlord contending that notice of determination invalid—Tenant remaining in occupation of premises after expiry of notice—Landlord claiming arrears of rent on basis of continuing tenancy but alternatively claiming double rent against tenant for holding over—Whether landlord precluded from claiming double rent if not treating tenant as trespasser. **Oliver Ashworth (Holdings) Ltd v Ballard (Kent) Ltd** [1999] 2 791, Ch D.

### Nuisance—

Liability of landlord for nuisance. *See* Nuisance (Landlord's liability).

#### Possession—

Recovery—Generally. *See* Recovery of possession, *post*.

### Quiet enjoyment—

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### Recovery of possession—

#### Order for possession—

Assured tenancy—Tenant holding property on assured fixed term tenancy—Tenant falling into arrears and landlord obtaining order for possession—Tenant applying for suspension of order and paying off arrears—Whether county court's power to grant relief from forfeiture applicable to proceedings for possession of property held under assured tenancy—County Courts Act 1984, s 138—Housing Act 1988, ss 5(1), 7(6), 45(4). **Artesian Residential Investments Ltd v Beck** [1999] 3 113, CA.

### Relief against forfeiture—

#### Right to apply for relief—

Charging order—Creditors obtaining charging order over flat to secure payment of debt owed to them by tenant—Creditors registering caution to protect charging order—Landlords bringing proceedings against tenant for non-payment of rent and obtaining possession order—Creditors not being informed of possession order but later applying to intervene in possession action—Whether holder of charging order entitled to apply for relief against forfeiture—Whether creditors should have been notified of possession proceedings—County Courts Act 1984, s 138—CCR Ord 6, r 3. **Croydon (Unique) Ltd v Wright (Crombie and anor intervening)** [1999] 4 257, CA.

### Rent—

#### Low—

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Restriction. *See* Rent restriction.

### Statutory tenancy—

Continuation. *See* Long tenancy at low rent—Continuation as statutory tenancy, *ante*.

### Surrender of tenancy—

#### Surrender by operation of law—

Surrender on sale of land subject to lease in favour of vendor—Sale of part of land—Whether lease still subsisting in relation to unsold land—Whether surrender operating in respect of unsold land. **Allen v Rochdale BC** [1999] 3 443, CA.

### Tenancy—

#### Tenancy at will—

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#### Tenancy distinguished from licence—

Provision of temporary accommodation for homeless—Housing trust granted licence by local authority of block of flats for use for occupation by persons in need of accommodation—Plaintiff signing agreement with trust to occupy flat on temporary basis on weekly licence—Plaintiff aware trust having no title to premises—Whether tenancy or licence created. **Bruton v London and Quadrant Housing Trust** [1999] 3 481, HL.

## LANGUAGE

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Use in Crown Court. See **Crown Court** (Practice—Wales—Use of Welsh language).

## LEASE

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Disclaimer of lease—

Voluntary winding up. See **Company** (Voluntary winding up—Disclaimer of onerous property—Lease).

Finance lease—

Contract. See **Contract** (Finance lease).

Grant—

Grant of lease by nominee to principal—

Validity—Whether breach of principle that person cannot contract with himself. **Ingram (exors of the estate of Lady Ingram (decd)) v IRC** [1999] 1 297, HL.

Reversion—

Flats—

Disposal by landlord—Tenants' right to acquire reversion. See **Landlord and tenant** (Flats—Tenants' right to acquire landlord's reversion).

## LEAVE

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Criminal proceedings. See **Criminal law** (Appeal—Leave to appeal).

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## LEGAL AID

Assisted person's liability to pay costs—

Date on which person ceases to be assisted party for purposes of costs liability—

Legal Aid Act 1988, ss 2, 17, 18—Civil Legal Aid (General) Regulations 1989, reg 3. **Burridge v Stafford, Khan v Ali** [1999] 4 660, HL.

Certificate—

Revocation—

Applicant obtaining legal aid to sue former employer—Legal Aid Board revoking certificate on grounds of untrue statement as to resources or failure to disclose material fact concerning them—Whether revocation a punitive measure—Whether decision unreasonable and disproportionate—Civil Legal Aid (General) Regulations 1989, reg 78(1)(a). **R v Legal Aid Board, ex p Parsons** [1999] 3 347, CA.

Criminal cases—

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Jurisdiction—Jurisdiction to grant legal aid in criminal proceedings—Meaning of criminal proceedings—Legal Aid Act 1988, s 19. **R v Bow Street Magistrates' Court, ex p Shayler** [1999] 1 98, QBD.

Order for costs—

Award of costs against assisted person—

Enforcement of order—Assessment of legally assisted person's resources—Whether interest of spouse of legally assisted person in matrimonial home to be aggregated—Whether costs order should be enforced—Legal Aid Act 1988, s 17—Civil Legal Aid (General) Regulations 1989, reg 126. **Waterford Wedgwood plc v David Nagli Ltd (Houghton and anor, [line]third parties)** [1999] 3 185, Ch D.

## LEGAL PROFESSIONAL PRIVILEGE

Discovery. See **Discovery** (Legal professional privilege).

Generally. See **Privilege** (Legal professional privilege).

## LIABILITY INSURANCE

See **Insurance** (Liability insurance).

## LIBEL AND SLANDER

Particulars—

Justification—

Relevance of particulars to pleading—Plaintiff producing television documentary alleging conspiracy to murder republicans in Northern Ireland—Defendants publishing article claiming that programme was a hoax—Plaintiff bringing proceedings for libel and defendants pleading justification—Defendants applying to reamend particulars of justification to add new particulars challenging existence of conspiracy—Whether cost and expense of litigating issues raised by amendment disproportionate. **McPhilemy v Times Newspapers Ltd** [1999] 3 775, CA.

Privilege—

Absolute privilege—

Communication to financial services regulatory body in response to request for information—Whether such communication attracting absolute privilege. **Mahon v Rahn (No 2)** [1999] 2 Comm 789, QBD.

Proceedings in Parliament—

Questioning proceedings in Parliament—Committee of House of Commons—Former member of Parliament claiming damages against defendant for defamatory allegations during television interview—Allegations subject of inquiry by Parliamentary Commissioner for Standards and dealt with in report adopted by Committee on Standards and Privileges in report approved by House of Commons—Whether action abuse of process of court—Whether action collateral attack on parliamentary investigation—Bill of Rights (1688), s 1, art 9—Defamation Act 1996, s 13. **Hamilton v Al Fayed** [1999] 3 317, CA.

Qualified privilege. See **Qualified privilege, post**.

Publication—

Internet posting—

Posting defamatory of plaintiff being placed on Internet—Internet service provider failing to act on plaintiff's request to remove posting—Whether service provider having published defamatory posting—Defamation Act 1996, s 1. **Godfrey v Demon Internet Ltd** [1999] 4 342, QBD.

## **LIBEL AND SLANDER (cont)**

Qualified privilege—

Common law privilege—

Plaintiff resigning as prime minister of Ireland following political crisis—Newspaper publishing article on resignation and plaintiff suing for libel—Newspaper claiming qualified privilege—Whether publication of political information automatically attracting qualified privilege—Whether test for qualified privilege including ‘circumstantial test’ distinct from duty-interest test. **Reynolds v Times Newspapers Ltd** [1999] 4 609, HL.

Solicitor advocate—

Conflict of interest—

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## **LICENCE**

Licence to occupy premises—

Tenancy distinguished—

Generally. *See* **Landlord and tenant** (Tenancy—Tenancy distinguished from licence).

Nuisance—

Liability of occupier for nuisance committed by licensees. *See* **Nuisance** (Occupier—Licensees).

## **LICENSING**

Betting office—

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## **LIEN**

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## **LIFE IMPRISONMENT**

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## **LIMITATION OF ACTION**

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Negligence—

Valuer—Plaintiffs purchasing flat in reliance on valuation report prepared by defendants—Defects in property subsequently coming to light—Plaintiffs bringing actions for negligence more than six years after exchange of contracts but less than six years after completion—Whether action time-barred—Whether cause of action accruing when contracts were exchanged or when purchase was completed—Limitation Act 1980, s 2. **Byrne v Hall Pain & Foster (a firm)** [1999] 2 400, CA.

Bank. *See* **Bank** (Limitation of action).

Concealment of right of action by fraud—

Concealment by agent—

Defendant acting as broker for insurance pool which included plaintiff—Agreement containing fronting provision—Defendant using plaintiff to front large number of risks—Plaintiff querying its liability under fronting provision but defendant failing to explain why plaintiff had been used to front—Plaintiff bringing contractual and tortious claims against defendant in respect of fronting outside primary limitation period—Plaintiff relying on same facts to ground claim for breach of fiduciary duty—Plaintiff alleging concealment of relevant facts by defendant—Whether plaintiff had been aware of facts relevant to claim more than six years before commencing proceedings—Whether limitation period applied to breach of fiduciary duty claim—Limitation Act 1980, s 32. **Cia de Seguros Imperio (a body corporate) v Heath (REBX) Ltd (formerly C E Heath & Co (North America) Ltd)** [1999] 1 Comm 750, QBD.

Court's power to override time limit in personal injury or fatal accident claim—

Practice—

Plaintiff injured by defendant driving company car—Summons issued against company within limitation period—Plaintiff failing to serve summons in time so action struck out—Plaintiff commencing proceedings against defendant outside limitation period—Whether plaintiff barred from commencing second action—Whether court entitled to exercise discretion to disapply limitation period—Whether court should do so—Limitation Act 1980, s 33. **Shapland v Palmer** [1999] 3 50, CA.

Negligence—

Accrual of cause of action—

Negligence. *See* **Accrual of cause of action—Negligence, ante**.

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Amendment—

Leave to amend after expiry of limitation period. *See* **Pleading** (Amendment—Leave to amend after expiry of limitation period).

Trust property—

Breach of fiduciary duty to account—

Plaintiff alleging under-accounting by defendants—Allegation forming basis of claims for breach of duty to account and fraud which were vulnerable to limitation defence—Plaintiff relying on same allegation to ground breach of fiduciary duty and constructive trust claims—Whether a simple duty to account could be a fiduciary duty—Whether equitable claims time-barred—Limitation Act 1980, s 5. **Coulthard v Disco Mix Club Ltd** [1999] 2 457, Ch D.

## **LIMITATION OF LIABILITY**

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Liability for loss or damage—

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Carriage by road. *See* **Carriers** (Limitation of liability).

Generally. *See* **Contract** (Limitation of liability).



## LIQUIDATOR

- Company—
  - Compulsory winding up—
    - Provisional liquidator. *See* **Company** (Compulsory winding up—Provisional liquidator).

## LIS PENDENS

- Stay of proceedings—
  - Conflict of laws. *See* **Conflict of laws** (Stay of proceedings—Lis pendens).

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- Assistance—
  - Chambers proceedings. *See* **Practice** (Chambers proceedings—Party acting in person—Right to assistance).
- Costs—
  - Review of taxation—
    - Jurisdiction. *See* **Costs** (Taxation—Review of taxation—Jurisdiction—Litigant in person).

## LLOYD'S

- Insurance. *See* **Insurance** (Society of Lloyd's).
- Responsibilities of Society of Lloyd's—
  - Negotiation—
    - Implied contractual obligation. *See* **Contract** (Implied term—Duty to negotiate—Responsibilities of Society of Lloyd's).

## LOAN

- Bank. *See* **Bank** (Bank loan).

## LOCAL AUTHORITY

- Child—
  - Care. *See* **Child** (Care—Local authority).
- Housing—
  - Generally. *See* **Housing**.
- Land—
  - Disposal of land—
    - Power to demise land—Duty to obtain best consideration—Lessor of local authority land covenanting to use best endeavours to employ specified number of employees—Whether job creation relevant to local authority's obligation to obtain best consideration—Local Government Act 1972, s 123. **R v Pembrokeshire CC, ex p Coker** [1999] 4 1007, QBD.
- Negligence—
  - Duty to take care—
    - Children—Existence of duty. *See* **Negligence** (Duty to take care—Existence of duty—Children—Local authority).
- Town and country planning—
  - Generally. *See* **Town and country planning**.

## LOCAL GOVERNMENT

- Maladministration—
  - Complaint to local commissioner—
    - Commissioner's report—Commissioner finding council guilty of maladministration in respect of planning application—Commissioner applying tests set out in National Code of Local Government Conduct—Whether commissioner applying correct tests. **R v Local Comr for Administration in North and North East England, ex p Liverpool City Council** [1999] 3 85, QBD.

## LONG LEASE

- Long tenancy at low rent—
  - Generally. *See* **Landlord and tenant** (Long tenancy at low rent).

## MAGISTRATES

- Committal for sentence—
  - Offence triable summarily or on indictment—
    - Defendant indicating guilty plea to offence triable either way—Whether defendant should be committed to Crown Court for sentence—Guidelines—Magistrates' Courts Act 1980, s 38. **R v Warley Magistrates' Court, ex p DPP, R v Staines Magistrates' Court, ex p DPP, R v North East Suffolk Magistrates' Court, ex p DPP** [1999] 1 251, QBD.
- Licensing—
  - Betting office. *See* **Gaming** (Betting—Licensed betting office—Application for licence).
- Offence triable summarily or on indictment—
  - Committal for sentence. *See* Committal for sentence—Offence triable summarily or on indictment, *ante*.

## MAINTENANCE OF ACTION

- Champerty—
  - Abuse of process—
    - Shipbuilders agreeing to build vessels for buyer—Brokers being entitled to 4 or 5% commission on instalments paid by buyer—Buyer not paying instalments and shipbuilders bringing action against buyer and other defendants—Brokers' agent agreeing with shipbuilders to fund litigation—Agreement providing for funder to receive larger share of recovery from proceedings—Whether nature of agreement rendered proceedings abuse of process. **Stocznia Gdanska SA v Latvian Shipping Co (No 2)** [1999] 3 822, QBD.

## MALADMINISTRATION

- Local government. *See* **Local government** (Maladministration).
- Pension scheme. *See* **Pension** (Pension scheme—Maladministration of pension scheme).

## MAREVA INJUNCTION

- Generally. *See* **Practice** (Pre-trial or post-judgment relief—Mareva injunction).

## MARINE INSURANCE

Contract of marine insurance—

Condition survey—

Plaintiff purchasing Swedish dry dock with intention of towing it to England—Defendants providing 12 months' insurance cover on dry dock—Policy requiring towage survey and condition survey before dry dock set sail—Surveyor carrying out survey for purposes of towage only—Defendants noting and agreeing surveyor's report—Plaintiff claiming under policy—Whether policy required survey only for purposes of tow—Whether surveyor had been acting for defendants—Whether defendants estopped from relying on discharge of policy. **Kirkaldy & Sons Ltd v Walker** [1999] 1 Comm 334, QBD.

## MARITIME LAW

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## MARK

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## MASTER AND SERVANT

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## McKENZIE FRIEND

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Right to assistance).

## MEDICAL PRACTITIONER

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Disclosure of confidential information—

Company seeking to persuade doctors and pharmacists to disclose prescription information which did not reveal identity of patients—Department of Health advising that such disclosure would constitute breach of duty of confidence owed to patients—Whether disclosure of anonymous information by doctors and pharmacists could be breach of confidence. **R v Dept of Health, ex p Source Informatics Ltd** [1999] 4 178, CA.

## MEN AND WOMEN

Discrimination against a woman—

Employment. *See* **Employment** (Discrimination against a woman).

Equality of treatment—

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## MENTAL HEALTH

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Nearest relative—Unreasonable objection to application—Application for substitution of acting nearest relative—Whether county court having jurisdiction to make ex parte or interim order for substitution—County Courts Act 1984, s 38—Mental Health Act 1983, s 29. **R v Central London County Court, ex p London** [1999] 3 991, CA.

Criminal law—

Defence of insanity. *See* **Criminal law** (Insanity).

Mental health review tribunal—

Discharge of restricted patient—

Discharge—Tribunal directing conditional discharge of restricted patient—Direction subject to arrangements being made for accommodation and support of patient—Social services and area health authorities failing to provide after-care services for patient—Patient continuing to be detained because of non-implementation of conditions—Whether social services and area health authorities having duty to provide after-care services for patient—Whether conditions imposed by tribunal lawful—Mental Health Act 1983, ss 73, 117—Mental Health Review Tribunal Rules 1983, r 16. **R v Mental Health Review Tribunal, ex p Hall** [1999] 3 132, QBD.

Discharge—Tribunal imposing conditions on release of restricted patient and deferring direction for discharge until necessary arrangements put in place—Local social services and health authorities denying responsibility and failing to make necessary arrangements—Patient continuing to be detained because of non-implementation of conditions—Whether tribunal having duty to ensure conditions could be implemented within reasonable time—Mental Health Act 1983, s 73(7). **R v Mental Health Review Tribunal, ex p Hall** [1999] 4 883, CA.

Patient—

Admission to hospital. *See* Admission of patient to hospital, *ante*.

Discharge from hospital—

Psychopathic disorder—Treatability—Patient suffering from psychopathic disorder detained in hospital—Patient not mentally handicapped or suffering from mental deficiency—Whether patient suffering from psychopathic disorder entitled to be discharged if condition not able to be alleviated by treatment—Mental Health (Scotland) Act 1984, ss 17, 64. **Reid v Secretary of State for Scotland** [1999] 1 481, HL.

## MERCANTILE COURT

Bristol—

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## MINOR

Abduction—

Ethnic minority—

Parents taking child abroad against her will—Sister bringing wardship proceedings—Court's approach where traditional values of parents and individual integrity of child conflict. **Re KR (a child) (abduction: forcible removal by parents)** [1999] 4 954, Fam D.

Adoption—

Generally. *See* **Adoption**.

Care—

Local authority—

Negligence. *See* **Negligence** (Duty to take care—Existence of duty—Children—Local authority).

Change of surname—

Unmarried parents—

Mother known by former husband's name—Parents separating shortly after birth of child—Birth of child registered in mother's name—Father applying to change child's name—Judge granting application, but Court of Appeal allowing appeal—Whether Court of Appeal had exercised its discretion correctly—Children Act 1989, ss 1, 8. **Dawson v Wearmouth** [1999] 2 353, HL.

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## MISFEASANCE

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Generally. *See* **Public office** (Abuse of—Misfeasance by a public officer).

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Reinsurance. *See* **Insurance** (Reinsurance—Misrepresentation).

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Misrepresentation by person exercising influence. *See* **Equity** (Undue influence—Misrepresentation by person exercising influence).

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## MISTAKE

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Restitution. *See* **Restitution** (Money paid under mistake of fact).

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Money paid under mistake—

Restitution. *See* **Contract** (Restitution—Mistake—Payment made under mistake of law).

## MORTGAGE

Action by mortgagee for possession—

Transfer of proceedings to High Court. *See* **Practice** (Transfer of proceedings between High Court and county court—Proceedings which must be in county court—Mortgagee possession actions).

Possession of mortgaged property—

Mortgagee's right to recover possession—

Mortgagee taking possession of mortgaged property unoccupied by mortgagor and exercising power of sale—Mortgagee not first obtaining possession order—Whether mortgagee entitled to take possession without first obtaining order of court—Administration of Justice Act 1970, s 36. **Ropaigealach v Barclays Bank plc** [1999] 4 235, CA.

Receiver—

Receiver's duties to mortgagor—

Mortgagee appointing receivers over mortgaged property—Receivers managing business carried on at mortgaged property—Whether receivers owed mortgagor a duty of care in managing mortgaged business. **Medforth v Blake** [1999] 3 97, CA.

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Disallowance. *See* **Value added tax** (Input tax—Disallowance of input tax—Motor vehicles).

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Change—

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Judge—  
Bias—

Non-pecuniary interest in outcome of proceedings—Law Lord serving as director of charity closely associated with party to an extradition appeal—Law Lord hearing appeal, but failing to disclose connection—Whether Law Lord automatically disqualified from hearing appeal. **R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)** [1999] 1 577, HL.

## NEGLIGENCE

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Measure of damages. *See* **Damages** (Measure of damages—Negligence).

Unwanted pregnancy. *See* **Damages** (Unwanted pregnancy—Negligence).

Duty to take care—

Existence of duty—

Children—Local authority—Duty to act as a parent of child after child taken into care—Decisions taken as to future of child—Child suffering deep-seated psychological and psychiatric problems—Whether local authority owing direct duty of care. **Barrett v Enfield London BC** [1999] 3 193, HL.

Duty of sub-contractor to employer—Construction contract distinguishing between nominated and domestic sub-contractors—Contract requiring employer to insure against fire risk and providing that nominated sub-contractors to be treated as insured parties or to have benefit of waiver of insurer's subrogation rights—Employer suing domestic sub-contractor for damage caused by fire—Whether insurance provisions of contract rendering it unfair, unjust and unreasonable to impose duty of care on domestic sub-contractor. **British Telecommunications plc v James Thomson & Sons (Engineers) Ltd** [1999] 2 241, HL.

Educational psychologist—Plaintiff, as a child, having history of lack of educational progress—Educational psychologist employed by local education authority examining plaintiff but failing to diagnose dyslexia—Plaintiff seeking to recover damages from local education authority as employer—Whether educational psychologist owing duty of care to plaintiff. **Phelps v Hillingdon London BC** [1999] 1 421, CA.

Nervous shock—

Employer—Rescuer—Employee suffering psychiatric injury in course of rescue—Police officers suffering psychiatric injury in aftermath of football stadium disaster caused by police negligence—Whether plaintiffs rescuers—Whether plaintiffs entitled to recover for psychiatric injury—Whether plaintiffs owed duty of care by employer as employees or rescuers. **White v Chief Constable of the South Yorkshire Police** [1999] 1 1, HL.

Police—

Generally. *See* **Police** (Negligence—Duty to take care).

Rescuer—

Nervous shock—Generally. *See* Duty to take care—Nervous shock, *ante*.

Solicitor. *See* **Solicitor** (Negligence).

Educational psychologist—

Duty of care. *See* Duty to take care—Existence of duty—Educational psychologist, *ante*.

Limitation of action—

Valuer—

Accrual of cause of action. *See* **Limitation of action** (Accrual of cause of action—Negligence—Valuer).

Local authority—

Children in care—

Duty of local authority to take care. *See* Duty to take care—Existence of duty—Children, *ante*.

Nervous shock—

Duty to take care. *See* Duty to take care—Nervous shock, *ante*.

Police—

Generally. *See* **Police** (Negligence).

Psychologist—

Educational psychologist—

Duty of care. *See* Duty to take care—Existence of duty—Educational psychologist, *ante*.

Unwanted pregnancy—

Damages. *See* **Damages** (Unwanted pregnancy—Negligence).

Valuer—

Accrual of cause of action. *See* **Limitation of action** (Accrual of cause of action—Negligence—Valuer).

Damages—

Measure of damages. *See* **Damages** (Measure of damages—Negligence—Valuer).

Will—

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Duty of care. *See* **Solicitor** (Negligence—Will—Duty of care).

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Dispute resolution—

Contractual provisions. *See* **Contract** (Dispute resolution—Provision for negotiations).

Without prejudice negotiations—

Evidence. *See* **Evidence** (Without prejudice negotiations).

## NERVOUS SHOCK

Negligence—

Duty to take care—

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## NOISE

Landlord and tenant—

Covenant for quiet enjoyment. *See* **Landlord and tenant** (Covenant—Quiet enjoyment).

Nuisance—

Generally. *See* **Nuisance** (Noise).

## NON-CONTENTIOUS PROBATE

Practice. *See* **Probate** (Practice—Non-contentious probate).

## NOTICE TO QUIT

Landlord and tenant. *See* **Landlord and tenant** (Notice to quit).

## NUISANCE

Landlord's liability—

Nuisance created by tenants—

Local authority landlord letting flat to appellant—Appellant hearing everyday activities of neighbouring tenants because of inadequate soundproofing—Whether ordinary use of flat capable of constituting actionable nuisance—Whether landlord liable to appellant in tort of nuisance. **Southwark London BC v Mills, Baxter v Camden London BC** [1999] 4 449, HL.

Plaintiffs owning property on housing estate owned by defendant council and alleging that council's tenants had racially harassed them—Plaintiffs alleging that council had failed to take appropriate steps to halt harassment—Whether plaintiffs having cause of action in nuisance or negligence against council. **Hussain v Lancaster City Council** [1999] 4 125, CA.

Noise—

Flats—

Building converted into flats—Local authority landlord letting flats—Noise from ordinary use of flats constituting undue interference with plaintiff's enjoyment of her flat—Whether local authority liable in nuisance. **Baxter v Camden London BC** [1999] 1 237, CA.

Occupier—

Licensees—

Council owning land adjacent to plaintiffs' land—Plaintiffs alleging that travellers based on council's land had committed various activities on their land—Plaintiffs bringing action for nuisance against council in respect of travellers' activities—Whether occupier of land could be liable in nuisance for acts committed by its licensees on plaintiff's land. **Lippiatt v South Gloucestershire Council** [1999] 4 149, CA.

Statutory nuisance—

Abatement notice—

Owner of premises—Person receiving the rack rent as agent—Local authority serving abatement notice on managing agent—Whether managing agent could be owner of premises for such purpose—Environmental Protection Act 1990, s 80(2)(b). **Camden London BC v Gunby** [1999] 4 602, CA.

Complaint to justices—

Proceedings against local authority—Service of statutory notice prior to commencement of proceedings—Statutory notice sent to address specified by local authority—Whether notice properly served—Whether justices having jurisdiction to entertain complaint—Environmental Protection Act 1990, ss 82(6), 160. **Hall v Kingston upon Hull City Council, Ireland v Birmingham City Council, Baker v Birmingham City Council** [1999] 2 609, QBD.

Premises in such a state as to be prejudicial to health or a nuisance—

Risk of physical injury arising from state of premises—Council serving abatement notice on landlord requiring replacement of steep staircase—Council withdrawing notice following legal advice that steep staircase could not be statutory nuisance—Tenant seeking judicial review of decision—Whether risk of physical injury arising from state of premises could be statutory nuisance—Environmental Protection Act 1990, s 79(1)(a)(7). **R v Bristol City Council, ex p Everett** [1999] 2 193, CA.

## OATH

Probate—

Grant of representation. *See* **Probate** (Practice—Non-contentious probate—Grant of representation—Oath in support of application).

## OCCUPIER

Nuisance. *See* **Nuisance** (Occupier).

## OFFER

Contract. *See* **Contract** (Offer and acceptance).

## OFFICIAL CUSTODIAN FOR CHARITIES

Party—

Charity proceedings. *See* **Charity** (Proceedings—Parties—Official Custodian for Charities).

## OMBUDSMAN

Pensions—

Costs of appeal—

Liability of ombudsman for costs of successful appeal against his determination. *See* **Costs** (Order for costs—Costs of appeal—Pensions Ombudsman).

Jurisdiction—

Maladministration of pension scheme. *See* **Pension** (Pension scheme—Maladministration of pension scheme—Jurisdiction of Pensions Ombudsman).

## OVERRIDING INTEREST

Registered land. *See* **Land registration** (Overriding interest).

## OVERSEA COMPANY

Generally. *See* **Company** (Oversea company).

## PACKAGE TRAVEL

Consumer protection—

European Community. *See* **European Community** (Consumer protection—Package travel).

## PAGER

Interception of communications—

Use of pager messages as evidence—

Criminal proceedings. *See* **Criminal evidence** (Interception of communications—Telephone intercepts—Pager).

## PARLIAMENT

Act of Parliament. *See* **Statute**.

Election—

Corrupt practice. *See* **Elections** (Corrupt practice—Parliamentary election).

Privilege—

Proceedings in Parliament—

Defamation action. *See* **Libel and slander** (Privilege—Proceedings in Parliament).

## PARTICULARS

Libel proceedings—

Generally. *See* **Libel and slander** (Particulars).

## PARTIES

Charity proceedings—

Generally. *See* **Charity** (Proceedings—Parties).

Existence of party—

Plaintiff. *See* **Practice** (Parties—Existence of plaintiff).

## PARTNERSHIP

Dissolution—

Effect—

Partnership property—Boxing promoters entering into partnership agreement relating to promotion and management of boxing—Promoter purporting to assign to partnership benefit and burden of existing agreements with boxers—Whether non-assignable property could be partnership property—Partnership Act 1890, s 20. **Don King Productions Inc v Warren** [1999] 2 218, CA.

Partnership property—

Dissolution—

Effect. *See* **Dissolution**—Effect—Partnership property, *ante*.

Valuation—

Partnership owning freehold property—Partner dying—Whether deceased partner's share in capital of partnership to be calculated by reference to book value of property or by reference to its market value. **Re White (decd), White v Minnis** [1999] 2 663, Ch D.

## PASSENGER VEHICLE

*See* **Road traffic** (Passenger vehicle).

## PASSING OFF

Discovery—

Interlocutory motion—

Jurisdiction. *See* **Discovery** (Interlocutory motion—Jurisdiction—Passing off).

Trade name—

Unincorporated association—

Unincorporated trade association holding exhibition known as the Long Point exhibition—Association expelling defendant as member—Defendant registering 'Long Point' as trade mark and announcing that it controlled Long Point exhibition—Claimant bringing passing off proceedings against defendant as representative of association members—Whether unincorporated association able to maintain action for passing off. **Artistic Upholstery Ltd v Art Forma (Furniture) Ltd** [1999] 4 277, Ch D.

## PATENT

Infringement—

Injunction—

Form of order—Plaintiffs obtaining judgment in patent action—Plaintiffs applying for injunction to restrain defendants from infringing patent in suit—Whether injunction should be limited to acts of infringement proved at trial. **Coflexip SA v Stolt Comex Seaway MS Ltd** [1999] 2 593, Ch D.

## PATIENT

Doctor and patient—

Confidential information—

Disclosure—Generally. *See* **Medical practitioner** (Doctor and patient—Disclosure of confidential information).

Mental. *See* **Mental health**.

## PAY

Equal pay—

Men and women—

Equality of treatment—European Community. *See* **European Community** (Equality of treatment of men and women).

Equality of treatment—Generally. *See* **Employment** (Equality of treatment of men and women).

## PAYMENT INTO COURT

Costs—

Generally. *See* **Costs** (Payment into court).

## PENSION

Pension scheme—

Company pension scheme—

Privatisation of statutory corporation leading to winding up of employee pension funds—Surpluses in funds being distributed to government—Trustee commencing proceedings for recovery of surpluses—Trustee asking for directions on application of statutory provisions—Whether funds remained occupational pension schemes—Whether schemes had any members—Pension Schemes Act 1993 s 1—Pensions Act 1995, s 124(1)—Register of Occupational and Personal Pension Schemes Regulations 1997, reg 1(4). **Bus Employees Pension Trustees Ltd v Harrod, NBP Pension Trustees Ltd v Paddock** [1999] 2 993, Ch D.



## PENSION (cont)

### Pension scheme (cont)—

#### Maladministration of pension scheme—

Jurisdiction of Pensions Ombudsman—Exercise of jurisdiction of Pensions Ombudsman—Trustees of pension scheme amending rules by deed of amendment—Amendment giving extra benefits to one class of members—Pensions Ombudsman holding that trustees had acted in breach of trust and directing scheme to be administered under pre-amendment rules—Direction depriving persons who were not parties to proceedings of proprietary rights—Whether trustees under duty to act impartially when exercising discretionary powers between various beneficiaries—Whether ombudsman entitled to make direction affecting rights of third parties to proceedings—Pension Schemes Act 1993, s 146.

**Edge v Pensions Ombudsman** [1999] 4 546, CA.

Jurisdiction of Pensions Ombudsman—Injury allowance scheme—Local authority at first refusing to entertain application for allowance and then making small award—Pensions Ombudsman finding maladministration and directing local authority to back date allowance and pay damages for distress—Whether ombudsman having jurisdiction to entertain complaint—Pension Schemes Act 1993, s 1. **Swansea City and County v Johnson** [1999] 1 863, CA.

## PENSIONS OMBUDSMAN

### Costs of appeal—

Liability of ombudsman for costs of successful appeal against his determination. *See* **Costs** (Order for costs)—Costs of appeal—Pensions Ombudsman).

### Jurisdiction—

Maladministration of pension scheme. *See* **Pension** (Pension scheme—Maladministration of pension scheme)—Jurisdiction of Pensions Ombudsman).

## PERFORMANCE BOND

Generally. *See* **Contract** (Bond—Performance bond).

## PERSONAL INJURIES

### Damages—

Generally. *See* **Damages** (Personal injury).

Interest. *See* **Interest** (Damages—Personal injury).

### Limitation of action—

Court's power to override time limit. *See* **Limitation of action** (Court's power to override time limit in personal injury or fatal accident claim).

## PERSONAL REPRESENTATIVES

Generally. *See* **Executor and administrator**.

## PETITION

### Bankruptcy—

Proceedings under Insolvency Act 1986. *See* **Insolvency** (Petition).

### Company—

Administration order. *See* **Company** (Administration order—Petition).

Compulsory winding up—

Judgment creditor's petition. *See* **Company** (Compulsory winding up—Petition by judgment creditor).

## PLANNING

### Planning control—

#### Development—

Generally. *See* **Town and country planning**.

## PLEADING

### Amendment—

Application to amend pleadings and adduce further evidence after judgment but before drawing up of order—

Principles applicable on such an application. **Charlesworth v Relay Roads Ltd (in liq)** [1999] 4 391, Ch D.

Leave to amend after expiry of limitation period—

Plaintiffs claiming damages for negligence—Plaintiffs seeking leave to amend statement of claim to allege fraud—Whether amendment constituting new claim—Whether amendment involving same facts as original claim—Whether leave to amend should be granted—RSC Ord 20, r 5. **Paragon Finance plc v D B Thakerar & Co (a firm), Paragon Finance plc v Thimbleby & Co (a firm)** [1999] 1 400, CA.

### Particulars—

#### Libel—

Generally. *See* **Libel and slander** (Particulars).

## POLICE

### Allocation of police resources—

#### Discretion—

Police operation mounted in response to animal rights protests against export of livestock—Operation mounted at considerable cost but unlikely to meet Home Office criteria for special financial assistance—Chief constable deciding not to apply for special financial assistance but to reduce levels of policing and restrict operation to specific days—Whether decision in breach of chief constable's duties to enforce law and keep peace—Whether decision constituting unreasonable exercise of discretion. **R v Chief Constable of Sussex, ex p International Trader's Ferry Ltd** [1999] 1 129, HL.

### Negligence—

#### Duty to take care—

Appropriate adult—Plaintiff acting as appropriate adult during interviews of murder suspect considered to be mentally disordered—Plaintiff claiming damages against police for psychological injury—Whether police owing duty of care to plaintiff—Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers. **Leach v Chief Constable of Gloucestershire Constabulary** [1999] 1 215, CA.

## POLICE (cont)

Negligence (cont)—

Duty to take care (cont)—

Person in custody—Suicide risk—Police taking person with suicidal tendencies into custody—Police having knowledge of prisoner's suicidal tendencies—Prisoner committing suicide by hanging himself using shirt tied through spyhole on outside of cell door—Administratrix on behalf of prisoner's estate bringing action for negligence against police—Whether police failing to take reasonable steps to prevent prisoner committing suicide—Whether defences of *volenti non fit injuria* and *novus actus interveniens* available—Whether prisoner contributorily negligent. **Reeves v Comr of Police of the Metropolis** [1999] 3 897, HL.

Plaintiff police officer injured by prisoner—Fellow police officer failing to come to plaintiff's assistance—Whether fellow police officer owing plaintiff a duty of care—Whether chief constable vicariously liable—Police Act 1964, s 48. **Costello v Chief Constable of the Northumbria Police** [1999] 1 550, CA.

Police authority—

Powers of police authority—

Private prosecutions being brought against retired police officers for actions in course of duty—DPP refusing to intervene in proceedings—Officers seeking judicial review of DPP's decision—Police authority refusing to fund judicial review proceedings and officers' defences to private prosecutions—Whether police authority having power to fund legal representation of police officers—Local Government Act 1972, s 111(1)—Police Act 1996, s 6(1). **R v DPP, ex p Duckenfield, R v South Yorkshire Police Authority, ex p Chief Constable of the South Yorkshire Police** [1999] 2 873, QBD.

## POSSESSION

Land—

Summary proceedings to recover possession. *See* **Land** (Summary proceedings for possession).

Landlord—

Recovery of possession—

Generally. *See* **Landlord and tenant** (Recovery of possession).

Mortgaged property—

Generally. *See* **Mortgage** (Possession of mortgaged property).

## POWER OF ATTORNEY

Enduring power of attorney—

Disposal of property—

Attorney having power to make provision for needs of any person if donor might have been expected to do so—Testatrix executing enduring power of attorney which was subsequently registered—Attorneys making payment towards education of testatrix's grandson—Whether valid exercise of power of attorney—Whether education of child constituting 'need'—Enduring Powers of Attorney Act 1985, s 3(4). **Re Cameron (decd), Phillips v Cameron** [1999] 2 924, Ch D.

## PRACTICE

Abuse of process—

Dismissal of action. *See* **Action** (Dismissal—Abuse of process of court).

Stay of proceedings—

Proceedings for disqualification of company director. *See* **Company** (Director—Disqualification—Stay of proceedings—Abuse of process).

Amendment—

Pleading. *See* **Pleading** (Amendment).

Appeal—

Arbitration award. *See* **Arbitration** (Award—Appeal).

Court of Appeal—

Civil Division. *See* **Court of Appeal**.

Criminal cases. *See* **Criminal law** (Court of Appeal).

Criminal cases—

Generally. *See* **Criminal law** (Appeal).

Divorce—

Generally. *See* **Divorce** (Appeal).

House of Lords. *See* **House of Lords** (Appeal).

Immigration appeal. *See* **Immigration** (Appeal).

Arbitration. *See* **Arbitration**.

Bristol—

Commercial cases. *See* **Commercial cases—Bristol, post**.

Cardiff—

Recorder—

Mode of address. *See* **Judge** (Mode of address—Recorder).

Chambers proceedings—

Party acting in person—

Right to assistance—Right of friend to assist by attendance, note-taking and advice—Litigant in person making chambers application in family proceedings—Judge refusing applicant permission to act as McKenzie friend—Applicant challenging refusal—Whether McKenzie friend had standing to apply for judicial review. **R v Bow County Court, ex p Pelling** [1999] 2 582, QBD.

Right to assistance—Right of friend to assist by attendance, note-taking and advice—Litigant in person making chambers application in family proceedings—Judge refusing applicant permission to act as litigant's McKenzie friend—Whether judge could refuse litigant's request for assistance of McKenzie friend—Whether judge ought to give reasons for refusing such a request. **R v Bow County Court, ex p Pelling** [1999] 4 751, CA.

Chancery Division—

Litigation. *See* **Civil litigation—Litigation in Queen's Bench Division, Chancery Division and county courts other than family proceedings, post**.

Civil litigation—

Litigation in Queen's Bench Division, Chancery Division and county courts other than family proceedings—Applicable practice directions—Civil Procedure Act 1997, s 5—Civil Procedure Rules 1998. **Practice Direction** [1999] 3 380, Supreme Ct.

## PRACTICE (cont)

### Civil Procedure Rules—

Commercial Court. *See* Commercial Court—Civil Procedure Rules, *post*.

### Striking out—

Appeal against striking out heard after introduction of Civil Procedure Rules—Whether earlier authorities relevant. *See* **Statement of claim** (Striking out—Abuse of process—Proceedings issued before introduction of Civil Procedure Rules).

### Commercial cases—

#### Bristol—

Bristol Mercantile Court—Designation of circuit judge or Queen's Counsel to act as judge of High Court to hear matter proceeding in Bristol Mercantile Court—Withdrawal of power of designation. **Practice Note** [1999] 2 1024, QBD.

### Commercial Court—

#### Civil Procedure Rules—

General information. **Statement in open court (Commercial Court Guide)** [1999] 4 471. [1999] 2 Comm 575, QBD.

### Confidential information—

#### Privilege—

Discovery of documents. *See* **Discovery** (Privilege—Confidential documents).

### Costs—

Arbitration. *See* **Arbitration** (Costs).

#### Contempt of court—

Committal. *See* **Contempt of court** (Committal—Costs).

Family proceedings. *See* **Family proceedings** (Costs).

Generally. *See* **Costs**.

Legal aid. *See* **Legal aid**.

#### Solicitor—

Generally. *See* **Solicitor** (Costs).

Payment of costs by solicitor personally. *See* **Solicitor** (Payment of costs by solicitor personally).

### County court. *See* **County court**.

### Court of Appeal—

#### Civil Division—

Generally. *See* **Court of Appeal** (Practice).

Criminal appeal. *See* **Criminal law** (Court of Appeal).

### Court-martial. *See* **Court-martial**.

### Criminal proceedings—

Court of Appeal. *See* **Criminal law** (Court of Appeal).

### Cross-claim—

Set-off. *See* **Set-off** (Cross-claim).

### Crown Court. *See* **Crown Court**.

### Damages—

False imprisonment. *See* **False imprisonment** (Damages).

Interest. *See* **Interest** (Damages).

### Defamation—

#### Pleading—

Particulars. *See* **Libel and slander** (Particulars).

### Devolution issues—

#### Wales—

Directions—Notice to Attorney General and Assembly—Reference of devolution issue by one court to another court—Reference of devolution issue to Judicial Committee of Privy Council—Judicial review proceedings—Family proceedings—Civil proceedings—Criminal proceedings—Appeals—Government of Wales Act 1998, Sch 8. **Practice Note** [1999] 3 466, Supreme Ct.

### Discontinuance of action—

#### Costs—

Discretion. *See* **Costs** (Order for costs—Discretion—Discontinuance of action).

### Discovery. *See* **Discovery**.

### Dismissal of action as abuse of process of court. *See* **Action** (Dismissal—Abuse of process of court).

### European Community—

Generally. *See* **European Community** (Procedure).

### Evidence—

Arbitration appeal. *See* **Arbitration** (Award—Appeal—Evidence).

Criminal proceedings. *See* **Criminal evidence**.

Generally. *See* **Evidence**.

### Expert evidence—

Admiralty action. *See* **Evidence** (Expert witness—Admiralty action).

### Family Division—

#### Allocation of cases to judiciary—

District judges—Jurisdiction—Inheritance (Provision for Family and Defendants) Act 1975—Trusts of Land and Appointment of Trustees Act 1996, s 14—Civil Procedure Rules 1998, Pt 2. **Practice Direction** [1999] 3 192, Fam D.

### Family proceedings. *See* **Family proceedings**.

### Foreign judgment—

Enforcement or recognition. *See* **Conflict of laws** (Foreign judgment).

### Handed down judgment. *See* **Judgment** (Handed down judgments).

### Hear-by dates—

Court of Appeal. *See* **Court of Appeal** (Practice—Hear-by dates).

### Industrial tribunal—

Generally. *See* **Industrial tribunal**.

### Injunction—

Mareva injunction. *See* Pre-trial or post-judgment relief—Mareva injunction, *post*.

### Interest—

Damages. *See* **Interest** (Damages).

### Judge—

Generally. *See* **Judge**.

## PRACTICE (cont)

### Judgment—

#### Foreign judgment—

Enforcement or recognition. *See* **Conflict of laws** (Foreign judgment).

Generally. *See* **Judgment**.

### Leave to appeal—

Criminal proceedings. *See* **Criminal law** (Appeal—Leave to appeal—Practice).

Immigration appeal. *See* **Immigration** (Appeal—Leave to appeal).

### Legal aid. *See* **Legal aid**.

### Legal professional privilege—

Discovery of documents. *See* **Discovery** (Legal professional privilege).

Generally. *See* **Privilege** (Legal professional privilege).

### Libel and slander—

#### Pleading—

Particulars. *See* **Libel and slander** (Particulars).

### Limitation of action. *See* **Limitation of action**.

### Lis pendens—

#### Stay of proceedings—

Conflict of laws. *See* **Conflict of laws** (Stay of proceedings—Lis pendens).

### Litigant in person—

#### Chambers proceedings—

Assistance. *See* Chambers proceedings—Party acting in person—Right to assistance, *ante*.

#### Costs—

Review of taxation—Jurisdiction. *See* **Costs** (Taxation—Review of taxation—Jurisdiction—Litigant in person).

### Mareva injunction—

Generally. *See* Pre-trial or post-judgment relief—Mareva injunction, *post*.

### McKenzie friend—

#### Litigant in person—

Chambers proceedings—Right of litigant to assistance of McKenzie friend. *See* Chambers proceedings—

Party acting in person—Right to assistance, *ante*.

### Mercantile Court—

Bristol. *See* Commercial cases—Bristol—Bristol Mercantile Court, *ante*.

### Non-contentious probate. *See* **Probate** (Practice—Non-contentious probate).

### Oversea company—

Service. *See* **Company** (Oversea company—Service on overseas company).

### Particulars—

#### Defamation cases—

Generally. *See* **Libel and slander** (Particulars).

### Parties—

#### Charity—

Charity proceedings. *See* **Charity** (Proceedings—Parties).

#### Existence of plaintiff—

Plaintiff Panamanian company issuing writ against defendant in relation to an alleged contract—Plaintiff subsequently dissolved, but continuing to exist under Panamanian law for three years for certain limited purposes—Whether plaintiff remaining in existence beyond three-year period for purpose of resolving proceedings. **Phoenix Marine Inc v China Ocean Shipping Co** [1999] 1 Comm 138, QBD.

### Payment into court—

#### Costs—

Generally. *See* **Costs** (Payment into court).

### Pleading. *See* **Pleading**.

### Pre-trial or post-judgment relief—

#### Mareva injunction—

Ex parte application—Fire on board defendant's ship causing abandonment of planned voyage—Plaintiffs claiming to be owners of the ship's cargo—Defendant offering security for plaintiffs' claim—Plaintiffs applying ex parte for Mareva injunction—Plaintiffs failing to disclose defendant's offer of security—Defendant applying for discharge of injunction on grounds of material non-disclosure—Whether injunction should be discharged. **Gulf Interstate Oil Corp v ANT Trade and Transport Ltd of Malta, The Giovanna** [1999] 1 Comm 97, QBD.

Jurisdiction—Customs and Excise claiming customs duty from defendant—Defendant intending to transfer its business to new company—Customs and Excise seeking Mareva injunction to restrain transfer—Whether appropriate to invoke Mareva jurisdiction where defendant proposing to effect a bona fide transfer—Whether appropriate to invoke Mareva jurisdiction to fill gap in insolvency law—Whether Customs and Excise should give cross-undertaking in damages—Insolvency Act 1986, ss 238, 423. **Customs and Excise Comrs v Anchor Foods Ltd** [1999] 3 268, Ch D.

### Privilege—

#### Discovery of documents—

Generally. *See* **Discovery** (Privilege).

Legal professional privilege. *See* **Discovery** (Legal professional privilege).

#### Legal professional privilege—

Discovery of documents. *See* **Discovery** (Legal professional privilege).

Generally. *See* **Privilege** (Legal professional privilege).

### Probate. *See* **Probate**.

### Production of documents—

Generally. *See* **Discovery**.

### Queen's Bench Division—

Litigation. *See* Civil litigation—Litigation in Queen's Bench Division, Chancery Division and county courts other than family proceedings, *ante*.

### Review of taxation of costs—

Generally. *See* **Costs** (Taxation—Review of taxation).

### Security for costs—

Arbitration proceedings. *See* **Arbitration** (Costs—Security for costs).

### Service—

Overseas company. *See* **Company** (Overseas company—Service on overseas company).



## PRACTICE (cont)

### Service (cont)—

#### Service out of the jurisdiction—

Proceedings seeking relief by way of anti-suit injunction—Proceedings pending in Texas—Whether claimants entitled to leave to serve second defendant out of jurisdiction—RSC Ord 11, r 1. **Amoco (UK) Exploration Co v British American Offshore Ltd** [1999] 2 Comm 201, QBD.

#### Substituted service—

Plaintiff issuing proceedings against solicitor whose whereabouts were unknown—Plaintiff seeking order for substituted service on Solicitors' Indemnity Fund—Whether such an order could be granted if no likelihood that it would bring proceedings to defendant's notice—RSC Ord 65, r 4. **Abbey National plc v Frost (Solicitors' Indemnity Fund Ltd intervening)** [1999] 2 206, CA.

### Set-off—

Generally. *See* **Set-off**.

### Solicitor—

#### Costs—

Generally. *See* **Solicitor** (Costs).

Payment of costs by solicitor personally. *See* **Solicitor** (Payment of costs by solicitor personally).

### Statement of claim. *See* **Statement of claim**.

### Stay of proceedings—

#### Arbitration—

Generally. *See* **Arbitration** (Stay of court proceedings).

#### Company—

Director—Disqualification proceedings. *See* **Company** (Director—Disqualification—Stay of proceedings).

#### Conflict of laws—

Generally. *See* **Conflict of laws** (Stay of proceedings).

#### Costs orders in earlier proceedings—

Lloyd's applying for summary judgment against names—Names relying on defence of fraud—Court holding that alleged fraud could not provide a defence—Lloyd's obtaining summary judgment and costs orders—Names relying on same fraud allegations in claims for damages against Lloyd's—Lloyd's applying for claims to be stayed pending payment of costs in summary judgment proceedings—Whether stay should be granted. **Society of Lloyd's v Jaffray** [1999] 1 Comm 354, QBD.

#### Exercise of discretion—

Plaintiff purchasing shares in company in reliance on report prepared by defendant—Plaintiff referring claim against seller under sale agreement to foreign arbitration—Plaintiff commencing High Court proceedings for negligent misstatement against defendant—Whether court having jurisdiction to stay proceedings—Whether court correctly exercising discretion to stay proceedings. **Reichhold Norway ASA v Goldman Sachs International** [1999] 2 Comm 174, CA.

### Substituted service—

Generally. *See* Service—Substituted service, *ante*.

### Summary assessment of costs—

Court of Appeal, Civil Division. *See* **Court of Appeal** (Practice—Civil Division—Costs—Summary assessment of costs).

Generally. *See* **Costs** (Summary assessment of costs).

### Summary proceedings—

Possession of land. *See* **Land** (Summary proceedings for possession).

### Taxation of costs—

Generally. *See* **Costs** (Taxation).

### Transfer of proceedings between High Court and county court—

#### Proceedings which must be in county court—

Mortgagee possession actions—Possession summonses transferred from county court to High Court and consolidated with proceedings for repayment of loans—Possession orders made in consolidated proceedings—Whether High Court having jurisdiction to make possession orders—Whether proceedings should have been deconsolidated and possession actions transferred back to county court before possession orders made—Whether borrowers requiring leave to appeal to extend grounds of appeal in relation to money judgments—County Courts Act 1984, ss 21(3), 42—Courts and Legal Services Act 1990, s 1—High Court and County Courts Jurisdiction Order 1991. **Yorkshire Bank plc v Hall, Hall v Yorkshire Bank plc** [1999] 1 879, CA.

### Trial—

Criminal proceedings. *See* **Criminal law** (Trial).

### Wales—

Devolution issues. *See* Devolution issues—Wales, *ante*.

### Welsh language—

Use in Welsh court. *See* **Crown Court** (Practice—Wales—Use of Welsh language).

## PREGNANCY

### Unwanted pregnancy—

#### Negligence—

Damages. *See* **Damages** (Unwanted pregnancy—Negligence).

## PREMIUM TRUST DEED

Society of Lloyd's. *See* **Insurance** (Society of Lloyd's—Premium trust deed).

## PRESUMPTION

### Corruption—

Criminal offence. *See* **Criminal law** (Corruption—Presumption of corruption).

## PRISON

### Visits—

#### Visits by journalists—

Journalists seeking to visit prisoners who claimed to be victims of miscarriages of justice—Prison authorities only allowing visits to proceed if journalists signed undertaking not to use information gained for professional purposes—Journalists refusing to sign and visits not allowed to proceed—Whether complete ban on oral interviews between journalists and prisoners lawful—Prison Service Standing Order 5A, paras 37, 37A. **R v Secretary of State for the Home Dept, ex p Simms** [1999] 3 400, HL.

## PRIVATE INTERNATIONAL LAW

See **Conflict of laws**.

## PRIVILEGE

Discovery of documents. See **Discovery** (Privilege).

### Legal professional privilege—

#### Documents—

Discovery. See **Discovery** (Legal professional privilege).

#### Solicitor and client—

Communications between legal adviser and client—Judge ordering solicitors to produce to police any record or log recording applicant's arrival at their offices on a particular date, including appointment diaries and attendance notes—Documents likely to be material evidence—Whether documents privileged—Whether documents communications made for purposes of seeking or receiving legal advice—Police and Criminal Evidence Act 1984, s 9, Sch 1. **R v Crown Court at Manchester, ex parte Rogers** [1999] 4 35, QBD.

Loss of privilege—Defendant advised by solicitor to make no reply to police questions—Statement by solicitor as to grounds for advice adduced in evidence—Whether legal professional privilege waived—Whether questions could be asked about factual basis for advice. **R v Bowden** [1999] 4 43, CA.

Libel and slander. See **Libel and slander**.

## PROBATE

### Practice—

#### Non-contentious probate—

Grant of representation—Computer records—Annual calendar books—Supreme Court Act 1981, s 111. **Practice Direction** [1999] 1 384, Fam D.

Grant of representation—Oath in support of application—Oath to include name and dates of birth and death of deceased—Name and date of death of deceased to be included in notice for standing search or caveat. **Practice Direction** [1999] 1 832, Fam D.

## PRODUCTION OF DOCUMENTS

Generally. See **Discovery**.

## PROFESSIONAL INDEMNITY INSURANCE

See **Insurance** (Liability insurance—Professional indemnity insurance).

## PROFITS

### Income tax—

Deduction in computing profits. See **Income tax** (Deduction in computing profits).

## PROPERTY

Mortgage. See **Mortgage**.

Partnership property. See **Partnership** (Partnership property).

## PROSECUTION

### Evidence—

Generally. See **Criminal evidence** (Prosecution evidence).

## PROVISIONAL LIQUIDATOR

See **Company** (Compulsory winding up).

## PSYCHOLOGIST

### Educational psychologist—

Duty of care. See **Negligence** (Duty to take care—Existence of duty—Educational psychologist).

## PUBLIC HEALTH

### Waste disposal—

#### Waste management licence—

Disclaimer—Voluntary winding up of company. See **Company** (Voluntary winding up—Disclaimer of onerous property—Waste management licence).

## PUBLIC INTEREST

### Discovery of documents—

Privilege. See **Discovery** (Privilege—Production contrary to public interest).

## PUBLIC OFFICE

### Abuse of—

#### Misfeasance by a public officer—

Ingredients of tort—Causation—Depositors with licensed deposit-taker suffering loss when deposit-taker failing because of fraud—Depositors claiming Bank of England liable for misfeasance in public office in performance of public duty to supervise banking operations—Depositors alleging loss caused by bank wrongly granting licence or wrongly failing to revoke deposit-taker's licence—Whether bank capable of being liable to plaintiff depositors for tort of misfeasance in public office—Whether plaintiffs' losses caused or capable of being caused by Bank's acts or omissions. **Three Rivers DC v Bank of England (No 3) (Note)** [1999] 4 800, CA.

## **PUBLIC ORDER**

Trespassory assembly. *See* **Criminal law** (Trespassory assembly).

## **PUBLIC PROCUREMENT**

European Community. *See* **European Community** (Public procurement).

## **PUBLICATION**

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## **QUALIFIED PRIVILEGE**

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## **RACE RELATIONS**

Discrimination—

Victimisation—

Respondent employer interviewing applicant for position—Interviewers being aware that applicant had brought proceedings for racial discrimination against respondent and rejecting application—Applicant bringing fresh proceedings for victimisation against respondent—Whether conscious motivation a prerequisite for victimisation—Whether employer liable only if person who made interview arrangements acted in discriminatory manner—Race Relations Act 1976, ss 2(1), 4(1)(a). **Nagarajan v London Regional Transport** [1999] 4 149, CA.

## **RECEIVER**

Appointed by court—

Remuneration—

Appellant charged with VAT and PAYE offences—Respondent seizing money from appellant's home—Seized sum being used to pay receiver's remuneration—Appellant acquitted of charges—Appellant seeking to recover receiver's remuneration by costs order against respondent in High Court proceedings—Whether receiver's remuneration costs of and incidental to proceedings. **Re Andrews** [1999] 2 751, CA.

Drug trafficking—

Appointment of receiver—

Powers of receiver. *See* **Drugs** (Drug trafficking).

Mortgaged property—

Generally. *See* **Mortgage** (Receiver).

## **RECORDER**

Mode of address—

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## **REDUNDANCY**

Dismissal by reason of redundancy—

Cessation of or diminution in requirements of business for employees to carry out work of a particular kind—

Work of a particular kind—Slaughtering company employing applicants as meat plant operatives—Applicants normally working in slaughter hall but could be required to work elsewhere under their contracts—Company requiring fewer employees in slaughter hall and dismissing applicants—Whether applicants dismissed by reason of redundancy—Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965, s 11(2)(b). **Murray v Foyle Meats Ltd** [1999] 3 769, HL.

## **REFUGEE**

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Deportation. *See* **Immigration** (Deportation—Refugee).

Generally. *See* **Immigration** (Refugee).

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## **REINSURANCE**

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## **REMAND**

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## **REMUNERATION**

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## **RENT**

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Tenancy at low rent—

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Restriction. *See* **Rent restriction**.

## **RENT RESTRICTION**

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Homosexual partner—

Family of original tenant—Claim by tenant's partner of same sex to remain in possession—Whether partner living with tenant as husband or wife—Whether partner a member of tenant's family—Rent Act 1977, Sch 1, paras 2, 3(1). **Fitzpatrick v Sterling Housing Association Ltd** [1999] 4 705, HL.

## RESIDENCE ORDER

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## RESTITUTION

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Defence—

Customer authorising bank to make interbank transfer in discharge of debt owed to third party—Bank making transfer under mistake of fact—Whether money recoverable from payee. **Lloyds Bank plc v Independent Insurance Co Ltd** [1999] 1 Comm 8, CA.

## RESTRAINT ORDER

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Generally. *See* **Sentence** (Restraint order).

## REVENUE

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## REVERSION

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Disposal by landlord—

Tenants' right to acquire reversion. *See* **Landlord and tenant** (Flats—Tenants' right to acquire landlord's reversion).

## ROAD TRAFFIC

Goods vehicle—

Limitation of driver's time on duty—

Company providing road maintenance services and using lorry to transport road planing machine for use at another site—Driver failing to keep tachograph record—Whether company's use of lorry was use 'in connection with' highway maintenance and control—Transport Act 1968, s 97—Council Regulation (EEC) 3820/85, art 4(6). **Vehicle Inspectorate v Bruce Cook Road Planing Ltd** [1999] 4 761, HL.

Passenger vehicle—

Limitation of driver's time on duty under Community rules—

Offence for employer to permit driver to contravene rules—Meaning of permit—Requisite mens rea—Effect of employer's failure to examine tachograph charts—Transport Act 1968, s 96(11A). **Vehicle Inspectorate v Nuttall** [1999] 3 833, HL.

## SAFETY

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Duty of employer under Health and Safety at Work etc Act. *See* **Health and safety at work**.

## SALE OF GOODS

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Implied condition as to merchantable quality—

Sale in the course of a business—

Meaning—Sale of fishing vessel used exclusively for purposes of fishing business—Condition that vessel of merchantable quality only implied if sale 'in the course of a business'—Sale of vessel incidental to business—Whether sale made in the course of a business—Whether condition implied as to merchantable quality—Sale of Goods Act 1979, s 14(2). **Stevenson v Rogers** [1999] 1 613, CA.

## SALVAGE

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## SCHOOL

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## SECURITY FOR COSTS

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Confiscation order—

Application for confiscation order—

Time limit—Defendants pleading guilty but sentencing taking place more than six months later—Prosecution applying for confiscation orders—Defendants contending that application made more than six months since their convictions and therefore outside time limit—Whether conviction was date when offender was found or pleaded guilty or date of sentence—Criminal Justice Act 1988, ss 71, 72AA, 72A. **R v Shergill** [1999] 2 485, CA.

Realisable property—

Appellant corruptly accepting loan to buy property—Loan secured by legal charge in favour of third party—Appellant convicted of conspiracy to corrupt—Trial judge satisfied that loan was gift and legal charge unlikely to be enforced—Whether trial judge entitled to ignore legal charge when calculating amount of appellant's realisable property—Whether exercise of trial judge's discretion to make confiscation order unreasonable—Criminal Justice Act 1988, ss 71(6), 74(4). **R v Harvey** [1999] 1 710, CA.



## SENTENCE (cont)

### Consecutive terms—

Offender committing offence while released on licence from sentence imposed for earlier offence—

Offender ordered to be returned to prison to serve unexpired part of sentence for earlier offence—  
Whether court could impose sentence for new offence to run consecutively to period of return to  
prison—Criminal Justice Act 1991, s 40—Crime and Disorder Act 1998, s 102. **R v Lowe, R v Leask**  
[1999] 3 762, CA.

### Court-martial. *See* **Court-martial** (Sentence).

### Custodial sentence—

#### Seriousness of offence—

Offence so serious that only custodial sentence can be justified—Guidelines—Criminal Justice Act 1991,  
s 1(2)(a). **R v Howells** [1999] 1 50, CA.

### Harassment—

Guidelines. *See* **Criminal law** (Harassment—Sentence).

### Life imprisonment—

#### Discretionary life sentence—

Adult defendant committing a 'serious offence'—Defendant having previous conviction for another  
'serious offence'—Whether exceptional circumstances justifying court in not imposing life sentence—  
Crime (Sentences) Act 1997, ss 2, 28. **R v Kelly, A-G's Reference (No 53 of 1998)** [1999] 2 13, CA.

### Restraint order—

#### Power to make restraint order—

Restraint order for purpose of aiding enforcement of external confiscation order—External confiscation  
order—United States court ordering shares in company to be forfeited following criminal  
proceedings—Defendant failing to forfeit shares—United States court later valuing shares by adopting  
notional interest and increasing sum to be paid—Whether such an order an external confiscation  
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**United States Government v Montgomery (Montgomery, third party)** [1999] 1 84, CA.

### Variation of sentence—

Divisional Court. *See* **Divisional Court** (Jurisdiction—Variation of sentence).

## SERVICE

Generally. *See* **Practice** (Service).

### Writ—

Overseas company. *See* **Company** (Overseas company—Service on overseas company).

## SERVICE CONTRACT

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## SERVICES

### Value added tax—

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Generally. *See* **Value added tax** (Supply of goods or services).

## SET-OFF

### Cross-claim—

#### Legal right of set-off—

Applications to enforce two GAFTA arbitration awards—Applicant seeking to set off against liability  
under arbitration award debts due under washout agreement—Whether washout debt enforceable  
so as to allow set-off against liability under arbitration award—GAFTA form 64, cl 11, 29. **Glencore**  
**Grain Ltd v Agros Trading Co Ltd, Agros Trading Co Ltd v Glencore Grain Ltd** [1999] 2 Comm 288,  
CA.

### Right of set-off—

#### Contracting out—

Contract between seller and buyer excluding set-off subject to exception—Exception permitting set-off  
in respect of default by non-performing party of affiliate of non-performing party—Seller seeking  
summary judgment against buyer for non-payment—Buyer seeking to set off liability owed by seller's  
affiliate to buyer's affiliate—Whether buyer could set off liability of seller's affiliate without default by  
seller. **Sinochem International Oil (London) Co Ltd v Mobil Sales and Supply Corp (Sinochem**  
**International Oil Co Ltd, third party)** [1999] 2 Comm 522, QBD.

Plaintiff selling company—Contract providing that payment was 'absolute and unconditional' and 'shall  
not be affected ... by any other matter whatsoever'—Whether purchaser's right of set-off excluded.  
**BOC Group plc v Centeon LLC** [1999] 1 Comm 970, CA.

## SEX DISCRIMINATION

### Employment—

Discrimination against a woman. *See* **Employment** (Discrimination against a woman).

## SHIPPING

### Admiralty—

Jurisdiction. *See* **Admiralty** (Jurisdiction).

### Arrest of vessel—

Jurisdiction. *See* **Admiralty** (Jurisdiction—Action in rem—Arrest of ship).

### Bill of lading—

#### Carriage of goods by sea—

Title to cargoes passing to claimants after commencement of voyage—Cargoes carried on vessel  
owned by defendants but chartered to another company—Bills of lading issued on charterers' form—  
Demise clause describing owners as carrier but bills signed on behalf of charterers as carrier—Bills  
containing limitation clause protecting carrier's independent contractors—Cargo damaged due to  
defective stowage and claimants bringing claims in contract and tort against defendants—Whether  
defendants were carrier under bills of lading—Whether limitation clause protecting defendants—  
Whether defendants owing claimants duty of care in tort. **Homburg Houtimport BV v Agrosin Private**  
**Ltd, The Starsin** [1999] 2 Comm 591, QBD.

## SHIPPING (cont)

### Bill of lading (cont)—

#### Delivery of cargo—

Misdelivery on forged bill of lading—Plaintiff shipping goods on defendants' vessels—Defendants delivering goods on forged bill of lading—Plaintiffs suing defendants for breach of duty and conversion—Whether defendants' ignorance of forgery provided a defence. **Motis Exports Ltd v Dampskibsselskabet AF 1912, A/S** [1999] 1 Comm 571, QBD.

#### Incorporation of terms of charterparty—

Term excluding liability—Charterparty providing that captain should sign bills of lading as presented and excepting any act, neglect, default or error of judgment in the management and/or navigation of vessel—Charterers requiring master to sign bill of lading which incorporated all the terms, conditions and exceptions of the charterparty 'dated as overleaf', but date of charterparty not in fact filled in on front of bill—Vessel subsequently causing damage to consignee's crane and consignee suing shipowners—Whether shipowners entitled to indemnity or damages from charterers—Whether bill of lading incorporating terms of charterparty—Whether bill of lading proper and contractual bill—Whether master required to sign bill. **Orinoco Navigation Ltd v Ecotrade SpA, The Ikariada** [1999] 2 Comm 257, QBD.

### Cargo—

#### Bill of lading—

Delivery of cargo. *See* Bill of lading—Delivery of cargo, *ante*.

General average contribution by cargo owners. *See* General average, *post*.

### Carriage by sea—

#### Conflict of laws—

Carriage of goods by sea. *See* **Conflict of laws** (Shipping—Carriage of goods by sea).

### Charterparty—

#### Conditions and warranties—

Appellant chartering vessel from respondent—Clause of charterparty requiring owners to exercise due diligence in maintaining and restoring certain defects—Whether clause applied to defects existing when vessel delivered—Shelltime 4 charterparty, cl 3(i). **Poseidon Schiffahrt GmbH v Nomadic Navigation Co Ltd** [1999] 1 Comm 454, CA.

#### Loading—

Unseaworthiness—Charterers failing to ensure proper lashing of timber cargo—Cargo falling overboard and damaging vessel—Whether owners under obligation to intervene to prevent vessel sailing in unseaworthy condition. **Transocean Liners Reederei GmbH v Euxine Shipping Co Ltd, The Invros** [1999] 1 Comm 724, CA.

#### Time charter—

Generally. *See* Time charterparty, *post*.

#### Time for bringing claims—

Charterparty discharging charterers from liability unless owners brought claim within 90 days of vessel's discharge—Charterparty requiring owners to provide 'signed copy' of charterparty within 90-day limit—Charterers providing owners with unsigned copy of charterparty—Owners claiming demurrage but failing to provide signed copy of charterparty within time limit—Whether owners' demurrage claim time-barred—Whether charterparty required to be signed by both owners and charterers. **Mira Oil Resources of Tortola v Bocimar NV** [1999] 1 Comm 732, QBD.

### Conflict of laws—

Generally. *See* **Conflict of laws** (Shipping).

### Crew—

#### Wages—

Claim for wages—Lien for wages—Crew claiming maritime lien in respect of unpaid wages—Allotted part of wages paid to third party—Whether crew entitled to maritime lien in respect of allotted part of wages. **Cil v Owners of the Turiddu (First National Bank of Maryland intervening)** [1999] 2 Comm 161, CA.

### Fishing rights—

European Community. *See* **European Community** (Fishing rights).

### Freight—

#### Claim for freight—

Sub-charter providing for mode of payment of freight—Bill of lading incorporating charterparty provisions on payment of freight—Charterers agreeing that sub-charterers could deduct certain payments from freight payment, but charterparty making no provision for such deductions—Owners claiming unpaid freight from shippers and also claiming for delay in unloading vessel—Whether deducted payments went to discharge shippers' liability for freight—Whether bill of lading contained implied term that vessel would be discharged within a reasonable time. **Tradigrain SA v King Diamond Marine Ltd** [1999] 1 Comm 837, QBD.

### General average—

#### Contribution by cargo owners—

Bigham clause Insurance—Defendants insuring claimants' vessel for its proportion of general average—Vessel suffering damage during voyage and claimants making non-separation agreement with cargo owners—Agreement including Bigham clause capping cargo owners' contribution to general average—Whether defendants liable to claimants for general average in excess of Bigham cap. **Comatra Ltd v Various Underwriters** [1999] 2 Comm 1002, QBD.

### Loading—

Charterparty terms. *See* Charterparty—Loading, *ante*.

### Maritime lien—

#### Crew—

Wages. *See* Crew—Wages—Claim for wages—Lien for wages, *ante*.

### Sale of ship—

#### Seller's warranty and indemnity—

Sellers of vessels warranting that they were free from all encumbrances, mortgages and maritime liens—Sellers indemnifying buyers against consequences of claims made against vessels 'incurred prior to the time of delivery'—Defendant guaranteeing sellers' obligations under indemnity subject to specified limits per vessel 'in respect of any claim'—Guarantee remaining in force for one year—Scope of indemnity and guarantee—Norwegian sale form, cl 9. **Rank Enterprises Ltd and others v Gerard** [1999] 2 Comm 749, QBD.

## **SHIPPING (cont)**

### **Salvage—**

#### **Right to claim salvage—**

Plaintiffs' tug providing assistance to defendants' vessel—Plaintiffs claiming salvage—Defendants contending that their vessel was not in danger—Whether views of those on board defendants' vessel relevant in assessing whether there was salvage danger—Whether award should include element to encourage plaintiffs to invest in salvage. **The Hamtun (owners) v The St John (owners)** [1999] 1 Comm 587, QBD.

### **Slot charter—**

#### **Arrest of vessel—**

Admiralty jurisdiction. *See* **Admiralty** (Jurisdiction—Action in rem—Arrest of ship—Slot charter).

### **Time charterparty—**

#### **Employment clause—**

Charterparty requiring master to follow orders of charterers and to prosecute voyage with utmost despatch—Charterparty incorporating provision exempting owners from liability for any act, neglect or default of master in navigation—Charterers instructing master to follow shorter route—Master deciding to take longer route before commencement of voyage—Whether routing instructions orders as to employment or navigation of vessel—Whether decision taken before commencement of voyage could be decision on navigation—Carriage of Goods by Sea Act 1971, Sch, art IV, r 2(a). **Whistler International Ltd v Kawasaki Kisen Kaisha Ltd** [1999] 4 1999. [1999] 2 Comm 1, CA.

#### **Guarantee—**

Variation of charterparty terms—Owners letting ship to charterers for single time charter of 57.5 days minimum duration via Black Sea to Far East—Defendant guaranteeing charterers' obligations for time charter trip via Black Sea to Far East—Guarantee providing that defendant not exempted from liability by any variation in terms of charterparty—Owners and charterers agreeing addendum providing for about six/about eight months worldwide time charter—Whether addendum within scope of guarantee. **Melvin International SA v Poseidon Schiffahrt GmbH** [1999] 2 Comm 761.

### **Time for bringing claims—**

Construction of charterparty. *See* Charterparty—Time for bringing claims, *ante*.

## **SHOCK**

### **Nervous shock—**

#### **Duty to take care—**

Generally. *See* **Negligence** (Duty to take care—Nervous shock).

## **SLANDER**

Generally. *See* **Libel and slander**.

## **SLOT CHARTER**

### **Arrest of vessel—**

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## **SOCIAL SECURITY**

### **European Community—**

Freedom of movement of workers. *See* **European Community** (Workers—Freedom of movement—Social security).

### **Housing benefit—**

#### **Assessment—**

Appellant applying to local authority for housing benefit to cover rent for flat—Rent officer determining rent of flat not significantly above market rent—Authority treating rent as reduced for calculation of benefit—Factors to be taken into account by authority in making decision to reduce eligible rent—Housing Benefit (General) Regulations 1987, reg 11(2). **R v City of Westminster Housing Benefit Review Board, ex p Mehanne** [1999] 2 317, CA.

### **Income support—**

#### **Entitlement—**

Person from abroad only entitled to income support if habitually resident in United Kingdom—Meaning of habitually resident—Social security appeal tribunal finding claimant from Bangladesh habitually resident on date of arrival in United Kingdom—Tribunal considering only whether claimant had come to United Kingdom and for settled purposes—Whether tribunal right to do so—Income Support (General) Regulations 1987, reg 21(3), Sch 7, para 17. **Nessa v Chief Adjudication Officer** [1999] 4 677, HL.

#### **European Community—**

Freedom of movement of workers. *See* **European Community** (Workers—Freedom of movement—Social security—Income support).

## **SOCIETY OF LLOYD'S**

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### **Responsibilities—**

#### **Negotiation—**

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## **SOLDIER**

### **Criminal injuries compensation—**

Entitlement to compensation. *See* **Compensation** (Criminal injuries—Entitlement to compensation—Armed forces).

## **SOLICITOR**

### **Costs—**

#### **Contentious business—**

Taxation. *See* **Costs** (Taxation—Solicitor—Bill of costs for contentious business).



## SOLICITOR (cont)

### Costs (cont)—

#### Contingency fee—

Fee payable only in event of party being successful in action—Complaint of statutory nuisance—Nuisance remedied prior to trial and proceedings withdrawn—Complainant applying for costs—Solicitors never intending to pursue claim for costs against complainant—Whether complainant entitled to recover costs—Solicitors Practice Rules 1990. **Hughes v Kingston upon Hull City Council** [1999] 2 49, QBD.

Payment by solicitor personally. *See* Payment of costs by solicitor personally, *post*.

#### Recovery—

Unqualified person—Client requesting advice from a solicitor—Receptionist referring client to non-solicitor member of firm but failing to inform him that adviser not a solicitor—Firm not sending client a client care letter and client not discovering adviser's status until after performance of legal services—Whether firm entitled to recover its costs from client. **Pilbrow v Pearless De Rougemont & Co** [1999] 3 355, CA.

#### Taxation—

Generally. *See* **Costs** (Taxation—Solicitor).

### Duty—

#### Conflict of interest—

Solicitor advocate—Libel action—Solicitor advocate advising defendants that proposed article not defamatory—Plaintiff bringing action for libel and second defendant instructing solicitor advocate to represent him—Plaintiff applying to court to bar him from doing so—Whether breach of Law Society's Code for Advocacy for solicitor advocate to appear as advocate—Law Society's Code for Advocacy 1993, r 4.1(e). **Christie v Wilson** [1999] 1 545, CA.

### Legal professional privilege—

Generally. *See* **Privilege** (Legal professional privilege).

### Negligence—

#### Will—

Duty of care—Will executed—Disappointed beneficiary claiming will failing to record testatrix's instructions—Whether beneficiary having remedy in negligence—Whether beneficiary should apply for rectification. **Walker v Geo H Medicott & Son (a firm)** [1999] 1 685, CA.

### Payment of costs by solicitor personally—

Disclosure of privileged documents in application for solicitor to pay costs personally—

Defendants making admission shortly before trial contradicting initial defence—Plaintiff contending that defendants' solicitors knowingly conducted defence on false basis and applying for wasted costs order—Solicitors seeking disclosure of privileged documents containing statements made to them by defendants—Whether rule of court on disclosure of privileged documents in wasted costs applications *ultra vires*—Civil Procedure Act 1997, Sch 1, para 4—Civil Procedure Rules 1998, r 48.7(3). **General Mediterranean Holdings SA v Patel** [1999] 3 673, QBD.

### Solicitor advocate—

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### Will—

#### Negligence—

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## SPECIAL DAMAGES

### Interest—

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## SPECIAL EDUCATIONAL NEEDS

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## SPECIFIC PERFORMANCE

### Defence—

#### Reprehensible conduct—

Defendant contending that fraudulent misrepresentation by plaintiff induced it to enter into agreement—Defendant losing right to rescind contract—Whether defendant could rely on misrepresentation as defence to plaintiff's application for specific performance. **Geest plc v Fyffes plc** [1999] 1 Comm 672, QBD.

## STATE

### State aids—

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### State benefits—

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## STATEMENT OF CLAIM

### Striking out—

#### Abuse of process—

Proceedings issued before introduction of Civil Procedure Rules—Appeal against striking out heard after introduction of Civil Procedure Rules—Whether reference to earlier authorities relevant—Alternatives to striking out—Civil Procedure Rules 1998. **Biguzzi v Rank Leisure plc** [1999] 4 934, CA.

## STATUTE

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#### Ambiguous provision—

Principles applicable where enacting provision leaves scope of statutory right unclear. **Oliver Ashworth (Holdings) Ltd v Ballard (Kent) Ltd** [1999] 2 791, Ch D.



## STATUTE (cont)

### Repeal—

#### Savings—

Acquired right—Claimant having right to allowance under enactment—Claimant making claim within prescribed period but after repeal of enactment—Whether claimant's failure to claim before repeal precluded him from having acquired right under repealed enactment—Interpretation Act 1978, s 16(1)(c). **Chief Adjudication Officer v Maguire** [1999] 2 859, CA.

### Statutory requirement—

#### Procedural requirement—

Non-compliance—Principles applicable for determining consequences of non-compliance with procedural requirement. **R v Immigration Appeal Tribunal, ex p Jeyeanthan, Ravichandran v Secretary of State for the Home Dept** [1999] 3 231, CA.

## STATUTORY NUISANCE

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## STATUTORY OFFENCE

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### Arbitration—

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### Company—

#### Director—

Disqualification proceedings. See **Company** (Director—Disqualification—Stay of proceedings).

### Conflict of laws—

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Generally. See **Practice** (Stay of proceedings).

## STRICT LIABILITY

Absolute offences. See **Criminal law** (Absolute liability).

## SUBROGATION

### Insurance—

Generally. See **Insurance** (Subrogation).

## SUBSIDIARY COMPANY

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## SUBSTITUTE ARBITRATOR

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## SUBSTITUTED SERVICE

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## SUICIDE

### Suicide risk—

#### Person in police custody—

Police—Negligence—Duty to take care. See **Police** (Negligence—Duty to take care—Person in custody—Suicide risk).

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### Minor—

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### Discrimination—

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### Income tax—

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### Inheritance tax—

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### Value added tax—

European Community. See **European Community** (Value added tax).

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## TAXATION OF COSTS

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### Interception of telephone calls—

Use of telephone intercepts as evidence—

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## TENANCY

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Local authority tenancy—

Transfer of tenancy. *See* **Housing** (Local authority houses—Transfer of tenancy).

## THEFT

Obtaining property by deception. *See* **Criminal law** (Obtaining property by deception).

## THIRD PARTY

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Limitation—

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Claim for breach of rules relating to public supply contracts. *See* **European Community** (Procedure—

Claim for breach of rules relating to public supply contracts—Time limit).

Limitation of action. *See* **Limitation of action**.

## TIME CHARTER

*See* **Shipping** (Time charterparty).

## TORT

Concurrent tortfeasors—

Discharge of cause of action by settlement of claim—

Deceased agreeing before his death to accept sum in 'full and final settlement and satisfaction' of personal injury claim—Sum accepted less than full value of claim—Executors bringing dependency claim against concurrent tortfeasor under Fatal Accidents Act 1976—Whether payment made in full satisfaction of claim—Whether action against concurrent tortfeasor barred, **Jameson (exors of Jameson (decd)) v Central Electricity Generating Board (Babcock Energy Ltd, third party)** [1999] 1 193, HL.

Misfeasance in public office. *See* **Public office** (Abuse of—Misfeasance by a public officer).

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## TOWN AND COUNTRY PLANNING

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Validity of application for permission—

Company applying for planning permission and listed building consent—Planning authority taking view that applications were invalid—Company appealing to Secretary of State—Whether Secretary of State having jurisdiction to hear appeal—Whether planning authority sole arbiter of validity of application for planning permission—Town and Country Planning Act 1990, s 78—Planning (Listed Buildings and Conservation Areas) Act 1990, s 20. **R v Secretary of State for the Environment, Transport and the Regions, ex p Bath and North East Somerset DC** [1999] 4 418, CA.

Development—

Material change of use—

Council granting conditional planning permission for conversion of premises into flats—Permission prohibiting use of premises as temporary sleeping accommodation ie accommodation occupied by same person for less than 90 consecutive nights provided for a consideration arising by reason of occupant's employment—Company using flats to provide free holiday accommodation for employees—Whether accommodation provided for a consideration arising by reason of occupant's employment—Whether premises used as temporary sleeping accommodation—Greater London Council (General Powers) Act 1973, s 25(a). **R v Kensington and Chelsea Royal London BC, ex p Lawrie Plantation Services Ltd** [1999] 3 929, HL.

Development consent—

Environmental impact assessment—

Old mining permission—Local mineral authority determining conditions for continuation of operations under old mining permission without carrying out environmental impact assessment—Whether mineral authority required to carry out environmental impact assessment before determining conditions for continuation of operations under old mining permission—Planning and Compensation Act 1991, s 22, Sch 2—Council Directive (EEC) 85/337, arts 1.2, 2.1. **R v North Yorkshire County Council, ex p Brown** [1999] 1 969, HL.

Enforcement notice—

Amendment—

District council serving enforcement notice requiring appellant to cease using site for car parking—Appellant unsuccessfully challenging enforcement notice—County council serving enforcement notice requiring appellant to cease using site for dumping—Inspector adding car parking use to county council's enforcement notice but failing to specify any steps to remedy such use—Whether amendment had effect of granting planning permission in respect of car parking use—Town and Country Planning Act 1990, ss 173(11), 176(1). **Tandridge DC v Verrechia** [1999] 3 247, CA.

Permission for development—

Appeal to Minister against refusal of permission. *See* Appeal to Minister against refusal of permission for development, *ante*.

## TRADE

Transfer of—

Continuity of employment. *See* **Employment** (Continuity—Transfer of trade, business or undertaking).

## TRADE MARK

European Community. *See* **European Community** (Trade marks).

Exhaustion—

European Community—

Freedom of movement of goods. *See* **European Community** (Freedom of movement—Goods—Trade mark exhaustion).

'Likelihood of confusion'—

European Community. *See* **European Community** (Trade marks—'Likelihood of confusion').

## TRADE NAME

Passing off. *See* **Passing off** (Trade name).

## TRAFFICKING

Drugs. *See* **Drugs** (Drug trafficking).

## TRANSPORT

Carriers—

Generally. *See* **Carriers**.

## TRESPASSORY ASSEMBLY

*See* **Criminal law** (Trespassory assembly).

## TRIAL

Criminal—

Generally. *See* **Criminal law** (Trial).

## TRIBUNAL

Copyright Tribunal—

Costs. *See* **Costs** (Copyright Tribunal).

Industrial tribunal—

Generally. *See* **Industrial tribunal**.

Mental health review tribunal—

Generally. *See* **Mental health** (Mental health review tribunal).

Tribunal of inquiry—

Witness—

Tribunal investigating 'Bloody Sunday' shootings in Northern Ireland—Military witnesses fearing reprisals and asking to be identified by letters only—Tribunal refusing soldiers' request—Whether tribunal's decision unreasonable or unfair. **R v Lord Saville of Newdigate, ex p A** [1999] 4 860, CA.

## TRUST AND TRUSTEE

Constructive trust—

Breach of fiduciary duty—

Plaintiff acquiring option to purchase site with development potential—Plaintiff's surveyors disclosing confidential information about site to rival developers—Site owners exercising right to terminate option and selling site to plaintiff's rivals—Whether rival developers held site on constructive trust for plaintiff. **Satnam Investments Ltd v Dunlop Heywood & Co Ltd** [1999] 3 652, CA.

Executor de son tort—

Plaintiff's mother owning family home—Mother dying intestate and the property being held on statutory trusts for plaintiff and her two siblings—Plaintiff's brother not taking out letters of administration and acting as owner of the property—Plaintiff claiming share of the property and commencing proceedings more than 12 years after mother's death—Whether executor de son tort could be constructive trustee—Whether plaintiff's claim statute-barred—Limitation Act 1980, s 21. **James v Williams** [1999] 3 309, CA.

Creation of trust—

Declaration of trust—

Whether ineffective assignment at law capable of being effective in equity as declaration of trust. **Don King Productions Inc v Warren** [1999] 2 218, CA.

Limitation of action—

Trust property. *See* **Limitation of action** (Trust property).

## UNDUE INFLUENCE

Equitable relief. *See* **Equity** (Undue influence).

## UNFAIR DISMISSAL

Excluded classes of employment—

Employee who ordinarily works outside Great Britain—

Employee working as flight attendant for Saudi Arabian airline—Employment contract providing that employee might be based at any location where airline operated—Employee transferred to London—Employee resigning and bringing claim for unfair constructive dismissal—Tribunal dismissing claim because employee did not ordinarily work in Great Britain—Whether contract test or function test should be applied in determining where employee ordinarily works—Employment Rights Act 1996, s 196(2). **Carver (née Mascarenhas) v Saudi Arabian Airlines** [1999] 3 61, CA.

## UNINCORPORATED ASSOCIATION

Trade name—

Passing off. *See* **Passing off** (Trade name—Unincorporated association).

## UNLAWFUL EVICTION OF TENANT

*See* **Landlord and tenant** (Eviction—Unlawful eviction of tenant).

## VALUATION

Partnership property. *See* **Partnership** (Partnership property—Valuation).



## VALUE ADDED TAX

European Community. *See* **European Community** (Value added tax).

Input tax—

Adjustment of attribution of input tax—

Intended taxable supplies—United Kingdom subsidiary of foreign bank providing services to bank's London branch—Subsidiary recovering input tax on inward supplies attributable to intended taxable supplies to branch—Branch becoming part of same value added tax group as subsidiary—Subsidiary issuing invoice for management services—Branch making exempt supplies—Whether supplies used to provide services to branch appropriated for use in making exempt supplies—Value Added Tax Act 1983, s 29—Value Added Tax (General) Regulations 1985, regs 23, 34. **Svenska International plc v Customs and Excise Comrs** [1999] 2 906, HL.

Disallowance of input tax—

Motor vehicles—Delivery charges on supply of new cars—Whether 'consideration' for supply of car included incidental expenses such as transport costs—Value Added Tax Act 1994, s 19(2)—Council Directive (EEC) 77/388, art 11A(2)(b). **Customs and Excise Comrs v British Telecommunications plc** [1999] 3 961, HL.

Tax on supply to a taxable person of goods or services for purpose of business carried on by him—

Supply for purpose of business—Taxpayer selling homes as its business—Taxpayer paying estate agents' fees of vendors who purchased their houses—Whether taxpayer could deduct input tax paid on estate agents' fees—Value Added Tax Act 1983, s 14(3)(a). **Customs and Excise Comrs v Redrow Group plc** [1999] 2 1, HL.

Supply of goods or services—

European Community. *See* **European Community** (Value added tax—Supply of goods or services).

Single supply or separate supplies—

Delivery service on sale of new car—Car delivered to buyer by manufacturer—Whether separate supply of delivery service. **Customs and Excise Comrs v British Telecommunications plc** [1999] 3 961, HL.

Supply in course of a business—

Business—Professional body carrying out regulatory functions of granting licences, certificates and registration—Fees charged to applicants to cover costs—Whether activities carried out in course or furtherance of business—Whether activities economic activities—Whether value added tax chargeable for supply of services—Value Added Tax Act 1994, s 4—Council Directive (EEC) 77/388, art 4(1)(2). **Institute of Chartered Accountants in England and Wales v Customs and Excise Comrs** [1999] 2 449, HL.

Supply of services for a consideration—

Maintenance services—Firm of solicitors appointed maintenance trustee of block of flats—Maintenance trustee providing staff and paying them out of maintenance fund—Lessor and tenants contributing to maintenance fund—Whether provision of services of maintenance staff by maintenance trustee a supply of services for consideration—Whether staff employed by maintenance trustee—Whether maintenance trustee merely being reimbursed expenses 'paid out in the name and for the account of' lessor and tenants as purchasers or customers—Whether supply of staff's services exempt—Value Added Tax Act 1983, s 5, Sch 6, Group 1, item 1—Council Directive (EEC) 77/388, art 11A(1). **Nell Gwynn House Maintenance Fund Trustees v Customs and Excise Comrs** [1999] 1 385, HL.

## VALUER

Negligence—

Accrual of cause of action. *See* **Limitation of action** (Accrual of cause of action—Negligence—Valuer).

Damages—

Measure of damages. *See* **Damages** (Measure of damages—Negligence—Valuer).

## VICARIOUS LIABILITY

Master and servant—

Act within course of employment—

Joint tortfeasors—Defendant's employee assisting third party in fraud on bank—Assistance including non-tortious acts carried out in course of employment—Whether employer could be vicariously liable for acts of employee which only constituted a tort when combined with acts not in the course of employment. **Credit Lyonnais Bank Nederland NV (now known as Generale Bank Nederland NV) v Export Credits Guarantee Department** [1999] 1 929, HL.

## VICTIMISATION

Discrimination—

Race relations legislation. *See* **Race relations** (Discrimination—Victimisation).

## VILLAGE GREEN

Registration. *See* **Commons** (Registration—Town or village green).

## VISITOR

Journalist—

Visit to prison. *See* **Prison** (Visits—Visits by journalists).

## VOLUNTARY WINDING UP

Company. *See* **Company** (Voluntary winding up).

## WAGES

Crew. *See* **Shipping** (Crew—Wages).

## WALES

Cardiff—

Recorder—

Mode of address. *See* **Judge** (Mode of address—Recorder).

Devolution issues—

Practice. *See* **Practice** (Devolution issues—Wales).

Welsh language—

Use in Crown Court. *See* **Crown Court** (Practice—Wales—Use of Welsh language).



## **WALL**

- Dividing wall—  
Conveyance. *See* **Eviction** (Matrimonial home—Protection against eviction).

## **WAR RISKS**

- Aviation insurance. *See* **Insurance** (Aviation insurance—War risks).

## **WARRANTY**

- Charterparty—  
Generally. *See* **Shipping** (Charterparty—Conditions and warranties).
- Reinsurance warranty—  
Breach of warranty. *See* **Insurance** (Reinsurance—Risks insured—Breach of warranty).
- Sale of vessel. *See* **Shipping** (Sale of ship—Seller's warranty and indemnity).

## **WASTE**

- EC provisions. *See* **European Community** (Environment—Waste).

## **WASTE MANAGEMENT LICENCE**

- Disclaimer—  
Voluntary winding up of company. *See* **Company** (Voluntary winding up—Disclaimer of onerous property—Waste management licence).

## **WATER AND WATERCOURSES**

- Nitrates—  
European Community directive. *See* **European Community** (Environment—Water—Nitrates).

## **WILL**

- Double portions—  
Ademption—  
First defendant left equal share of residuary estate under his mother's will—Testatrix subsequently executing enduring power of attorney—Attorneys making payment towards education of first defendant's son—Whether gift by mother capable of constituting a portion—Whether payment conferring benefit on first defendant—Whether payment adeeming pro tanto first defendant's share of residuary estate. *Re Cameron (decd), Phillips v Cameron* [1999] 2 924, Ch D.
- Probate. *See* **Probate**.
- Solicitor—  
Negligence—  
Duty of care. *See* **Solicitor** (Negligence—Will—Duty of care).

## **WINDING UP**

- Company—  
Compulsory winding up. *See* **Company** (Compulsory winding up).
- Generally. *See* **Company** (Winding up).
- Voluntary winding up. *See* **Company** (Voluntary winding up).

## **WITHOUT PREJUDICE**

- Without prejudice negotiations—  
Evidence. *See* **Evidence** (Without prejudice negotiations).

## **WITNESS**

- Evidence—  
Civil proceedings—  
Contract, as to—Expert evidence. *See* **Contract** (Evidence—Expert witness).
- Generally. *See* **Evidence**.
- Tribunal—  
Tribunal of inquiry. *See* **Tribunal** (Tribunal of inquiry—Witness).

## **WRIT**

- Service—  
Generally. *See* **Practice** (Service).
- Oversea company. *See* **Company** (Oversea company—Service on overseas company).

## **WRONGFUL DISMISSAL**

- Damages—  
Contract. *See* **Contract** (Damages for breach—Wrongful dismissal).

